Michelle Morse, after falling ill from colon cancer, would only be covered by health insurance if she maintained a full-time class schedule while undergoing exhausting chemotherapy treatment. Michelle shouldn't have been forced to maintain that schedule—and risk her very recovery—because of her need to maintain her health insurance.

Michelle's Law provides needed protections and will help students who are enrolled in college and who only qualify as dependents under their parents' health insurance plans because of their student status. If these students get seriously ill and need to take a physician-certified leave of absence from college for up to a year, they will be able to maintain their coverage under their parent's health insurance. If they graduate before that time is up, their coverage will expire when it normally would have anyway. This is common sense—and will ensure that student-based dependent coverage lives up to its stated goal. No student should be forced to stay in college—and risk ruining their academic standing—because of inability to simultaneously battle their serious illness or injury and maintain their grades.

Although this bill is too late to help Michelle, we can still help other children who might one day have to make the choice between forcing themselves to go to school while severely ill or leaving school and trying to pay insurmountable fees. I'm advised that even the health insurance industry supports this bill. Let's stop debating and quickly pass this important piece of legislation. We owe it to our children to ensure that their health coverage is there when they need it most.

Mr. GEORGE MILLER of California. Madam Speaker, I want to thank Representatives HODES for introducing H.R. 2851, also known as Michelle's Law, and for his hard work in bringing the legislation to the House floor today.

H.R. 2851 is named in honor of Michelle Morse who was diagnosed with cancer while she was attending college at Plymouth State University.

While Michelle was facing one of the most difficult times in her life and desperately needed time off to deal with her diagnosis and receive treatment, her health insurer informed her that it would not cover her for chemotherapy treatments unless she continued in school full-time.

As a result, Michelle had to keep up with her course work at the same time as she was receiving 48 hours of chemotherapy a week. She died in November 2005.

Michelle's law declares that no college student should have as difficult a road as Michelle. Students should have the ability to focus on treatment and recovery before returning to school.

H.R. 2851 amends ERISA, the Public Health Service Act and the Internal Revenue Code to require employers and health insurance companies to continue covering college students for up to 12 months if, as the result of an illness or injury, they need to take time off from school to receive treatment and to recover. The rights provided under the bill are in addition to those already provided under ERISA, COBRA and HIPAA. The bill also preserves stronger state laws.

In fact many States are ahead of Congress on this issue and have already enacted laws that mandate insurers to cover children over 18 under a family plan regardless of the child's school status. Nine States have laws similar to H.R. 2851 and require health plans to continue insuring students who withdraw from school or change their status due to an illness or injury.

However, the state laws do not cover employer sponsored health plans regulated by ERISA which is one of the critical reasons H.R. 2851 is needed.

Receiving a cancer diagnosis or suffering a serious injury can be devastating. We must ensure that students who are seriously ill or injured do not have to choose between their health and their health insurance.

H.R. 2851 is a common sense bill that will benefit many young people facing adversity. I urge all of my colleagues to vote ''yes'' on H.R. 2851.

Mr. DINGELL. Madam Speaker, I rise today in support of H.R. 2851, ''Michelle's Law.'' This legislation protects students that are covered under their parents' health plan from losing their health insurance if they require a medically necessary leave of absence from school.

The impetus for this legislation—and the namesake for this bill—is a young woman named Michelle Morse. She was a full-time college student at Plymouth State University in New Hampshire who was diagnosed with colon cancer in 2003. Her doctors recommended that she cut back her college course load while undergoing chemotherapy treatment. She found, however, that if she cut back her classroom hours, she would lose her health insurance because she would no longer qualify as a dependent on her parents' health insurance plan.

She could not afford other coverage options, and she was forced to remain in school as a full-time student while undergoing fourteen rounds of chemotherapy. In 2005, she succumbed to her illness. Her mother has since lobbied for laws that would extend the definition of dependents to allow college students needing medical leaves of absence from classwork to retain health insurance coverage on their parents' policies.

I am pleased that this bill has bipartisan support. I thank Ranking Members BARTON and DEAL for their work as well as the Chairmen and Ranking Members of the Committees on Ways and Means and Education and Labor. Special acknowledgment should also go to Congressman HODES of New Hampshire, who has been a champion for this bill from the start.

Michelle's Law would make a small improvement in access to health insurance for individuals who find themselves in the precarious position of being at risk of losing their insurance because they are sick. We clearly have a long way to go to eliminate the growing problem of the uninsured and under insured, but this is a small step in that direction.

I am pleased to support this legislation and look forward to working with my colleagues to move it to the President's desk.

Mr. PALLONE. I yield back the balance of my time.

Mr. DEAL of Georgia. I, likewise, urge the adoption of this legislation, and yield back the balance of my time.

The SPEAKER pro tempore (Ms. BALDWIN). The question is on the motion offered by the gentleman from New Jersey (Mr. PALLONE) that the House suspend the rules and pass the bill, H.R. 2851, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. DINGELL. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 1108) to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1108

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Family Smoking Prevention and Tobacco Control Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under article I, section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) It is in the public interest for Congress to enact legislation that provides the Food and Drug Administration with the authority to regulate tobacco products and the advertising and promotion of such products. The benefits to the American people from enacting such legislation would be significant in human and economic terms.

(13) Tobacco use is the foremost preventable cause of premature death in America. It causes over 400,000 deaths in the United States each year, and approximately 8,600,000 Americans have chronic illnesses related to smoking.

(14) Reducing the use of tobacco by minors by 50 percent would prevent well over 10,000,000 of today's children from becoming regular, daily smokers, saving over 3,000,000 of them from premature death due to tobacco-induced disease. Such a reduction in youth smoking would also result in approximately $75,000,000,000 in savings attributable to reduced health care costs.

(15) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products, and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(16) In 2005, the cigarette manufacturers spent more than $13,000,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(17) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(18) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(19) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(20) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(21) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

(22) Tobacco advertising expands the size of the tobacco market by increasing consumption of tobacco products including tobacco use by young people.

(23) Children are more influenced by tobacco marketing than adults: more than 80 percent of youth smoke three heavily marketed brands, while only 54 percent of adults, 26 and older, smoke these same brands.

(24) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market. Children, who tend to be more price sensitive than adults, are influenced by advertising and promotion practices that result in drastically reduced cigarette prices.

(25) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(26) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(27) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones.

(28) Text only requirements, although not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(29) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(30) The final regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg. 44615–44618) for inclusion as part 897 of title 21, Code of Federal Regulations, are consistent with the first amendment to the United States Constitution and with the standards set forth in the amendments made by this subtitle for the regulation of tobacco products by the Food and Drug Administration, and the restriction on the sale and distribution of, including access to and the advertising and promotion of, tobacco products contained in such regulations are substantially related to accomplishing the public health goals of this Act.

(31) The regulations described in paragraph (30) will directly and materially advance the Federal Government's substantial interest in reducing the number of children and adolescents who use cigarettes and smokeless tobacco and in preventing the life-threatening health consequences associated with tobacco use. An overwhelming majority of Americans who use tobacco products begin using such products while they are minors and become addicted to the nicotine in those products before reaching the age of 18. Tobacco advertising and promotion play a crucial role in the decision of these minors to begin using tobacco products. Less restrictive and less comprehensive approaches have not and will not be effective in reducing the problems addressed by such regulations. The reasonable restrictions on the advertising and promotion of tobacco products contained in such regulations will lead to a significant decrease in the number of minors using and becoming addicted to those products.

(32) The regulations described in paragraph (30) impose no more extensive restrictions on communication by tobacco manufacturers and sellers than are necessary to reduce the number of children and adolescents who use cigarettes and smokeless tobacco and to prevent the life-threatening health consequences associated with tobacco use. Such regulations are narrowly tailored to restrict those advertising and promotional practices which are most likely to be seen or heard by youth and most likely to entice them into tobacco use, while affording tobacco manufacturers and sellers ample opportunity to convey information about their products to adult consumers.

(33) Tobacco dependence is a chronic disease, one that typically requires repeated interventions to achieve long-term or permanent abstinence.

(34) Because the only known safe alternative to smoking is cessation, interventions should target all smokers to help them quit completely.

(35) Tobacco products have been used to facilitate and finance criminal activities both domestically and internationally. Illicit trade of tobacco products has been linked to organized crime and terrorist groups.

(36) It is essential that the Food and Drug Administration review products sold or distributed for use to reduce risks or exposures associated with tobacco products and that it be empowered to review any advertising and labeling for such products. It is also essential that manufacturers, prior to marketing such products, be required to demonstrate that such products will meet a series of rigorous criteria, and will benefit the health of the population as a whole, taking into account both users of tobacco products and persons who do not currently use tobacco products.

(37) Unless tobacco products that purport to reduce the risks to the public of tobacco use actually reduce such risks, those products can cause substantial harm to the public health to the extent that the individuals, who would otherwise not consume tobacco products or would consume such products less, use tobacco products purporting to reduce risk. Those who use products sold or distributed as modified risk products that do not in fact reduce risk, rather than quitting or reducing their use of tobacco products, have a substantially increased likelihood of suffering disability and premature death. The costs to society of the widespread use of products sold or distributed as modified risk products that do not in fact reduce risk or that increase risk include thousands of unnecessary deaths and injuries and huge costs to our health care system.

(38) As the National Cancer Institute has found, many smokers mistakenly believe that ''low tar'' and ''light'' cigarettes cause fewer health problems than other cigarettes. As the National Cancer Institute has also found, mistaken beliefs about the health consequences of smoking ''low tar'' and ''light'' cigarettes can reduce the motivation

to quit smoking entirely and thereby lead to disease and death.

(39) Recent studies have demonstrated that there has been no reduction in risk on a population-wide basis from ''low tar'' and ''light'' cigarettes, and such products may actually increase the risk of tobacco use.

(40) The dangers of products sold or distributed as modified risk tobacco products that do not in fact reduce risk are so high that there is a compelling governmental interest in ensuring that statements about modified risk tobacco products are complete, accurate, and relate to the overall disease risk of the product.

(41) As the Federal Trade Commission has found, consumers have misinterpreted advertisements in which one product is claimed to be less harmful than a comparable product, even in the presence of disclosures and advisories intended to provide clarification.

(42) Permitting manufacturers to make unsubstantiated statements concerning modified risk tobacco products, whether express or implied, even if accompanied by disclaimers would be detrimental to the public health.

(43) The only way to effectively protect the public health from the dangers of unsubstantiated modified risk tobacco products is to empower the Food and Drug Administration to require that products that tobacco manufacturers sold or distributed for risk reduction be reviewed in advance of marketing, and to require that the evidence relied on to support claims be fully verified.

(44) The Food and Drug Administration is a regulatory agency with the scientific expertise to identify harmful substances in products to which consumers are exposed, to design standards to limit exposure to those substances, to evaluate scientific studies supporting claims about the safety of products, and to evaluate the impact of labels, labeling, and advertising on consumer behavior in order to reduce the risk of harm and promote understanding of the impact of the product on health. In connection with its mandate to promote health and reduce the risk of harm, the Food and Drug Administration routinely makes decisions about whether and how products may be marketed in the United States.

(45) The Federal Trade Commission was created to protect consumers from unfair or deceptive acts or practices, and to regulate unfair methods of competition. Its focus is on those marketplace practices that deceive or mislead consumers, and those that give some competitors an unfair advantage. Its mission is to regulate activities in the marketplace. Neither the Federal Trade Commission nor any other Federal agency except the Food and Drug Administration possesses the scientific expertise needed to implement effectively all provisions of the Family Smoking Prevention and Tobacco Control Act.

(46) If manufacturers state or imply in communications directed to consumers through the media or through a label, labeling, or advertising, that a tobacco product is approved or inspected by the Food and Drug Administration or complies with Food and Drug Administration standards, consumers are likely to be confused and misled. Depending upon the particular language used and its context, such a statement could result in consumers being misled into believing that the product is endorsed by the Food and Drug Administration for use or in consumers being misled about the harmfulness of the product because of such regulation, inspection, approval, or compliance.

(47) If manufacturers are permitted to state or imply in communications directed to consumers that a tobacco product is approved or inspected by the Food and Drug Administration or complies with Food and Drug Administration standards, consumers are likely to be confused and misled. Such a statement could result in consumers being misled into believing that the product is endorsed by the Food and Drug Administration for use or in consumers being misled about the harmfulness of the product because of such regulation, inspection, or compliance.

(48) In August 2006 a United States district court judge found that the major United States cigarette companies continue to target and market to youth. USA v Philip Morris, USA, Inc., et al. (Civil Action No. 99–2496 (GK), August 17, 2006).

(49) In August 2006 a United States district court judge found that the major United States cigarette companies dramatically increased their advertising and promotional spending in ways that encourage youth to start smoking subsequent to the signing of the Master Settlement Agreement in 1998. USA v Philip Morris, USA, Inc., et al. (Civil Action No. 99–2496 (GK), August 17, 2006).

(50) In August 2006 a United States district court judge found that the major United States cigarette companies have designed their cigarettes to precisely control nicotine delivery levels and provide doses of nicotine sufficient to create and sustain addiction while also concealing much of their nicotine-related research. USA v Philip Morris, USA, Inc., et al. (Civil Action No. 99–2496 (GK), August 17, 2006).

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to provide authority to the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products as provided for in this Act;

(2) to ensure that the Food and Drug Administration has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Food and Drug Administration to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Food and Drug Administration with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) in order to ensure that consumers are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(7) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry;

(9) to promote cessation to reduce disease risk and the social costs associated with tobacco-related diseases; and

(10) to strengthen legislation against illicit trade in tobacco products.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this Act (or an amendment made by this Act) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

(c) REVENUE ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Secretary to take certain actions with regard to tobacco products shall not be construed to affect any authority of the Secretary of the Treasury under chapter 52 of the Internal Revenue Code of 1986.

SEC. 5. SEVERABILITY.

If any provision of this Act, the amendments made by this Act, or the application of any provision of this Act to any person or circumstance is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(rr)(1) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).

''(2) The term 'tobacco product' does not mean an article that is a drug under subsection (g)(1), a device under subsection (h), or a combination product described in section 503(g).

''(3) The products described in paragraph (2) shall be subject to chapter V of this Act.

''(4) A tobacco product may not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetic, medical device, or a dietary supplement).''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 910 as sections 1001 through 1010; and

(3) by inserting after chapter VIII the following:

''CHAPTER IX—TOBACCO PRODUCTS

''SEC. 900. DEFINITIONS.

''In this chapter:

''(1) ADDITIVE.—The term 'additive' means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristic of any tobacco product (including any substances intended for use as a flavoring or coloring or in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding), except that such term does not include tobacco or a pesticide chemical residue in or on raw tobacco or a pesticide chemical.

''(2) BRAND.—The term 'brand' means a variety of tobacco product distinguished by the

tobacco used, tar content, nicotine content, flavoring used, size, filtration, packaging, logo, registered trademark, brand name, identifiable pattern of colors, or any combination of such attributes.

''(3) CIGARETTE.—The term 'cigarette'—

''(A) means a product that—

''(i) is a tobacco product; and

''(ii) meets the definition of the term 'cigarette' in section 3(1) of the Federal Cigarette Labeling and Advertising Act; and

''(B) includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

''(4) CIGARETTE TOBACCO.—The term 'cigarette tobacco' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements applicable to cigarettes under this chapter shall also apply to cigarette tobacco.

''(5) COMMERCE.—The term 'commerce' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act.

''(6) COUNTERFEIT TOBACCO PRODUCT.—The term 'counterfeit tobacco product' means a tobacco product (or the container or labeling of such a product) that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a tobacco product listed in a registration under section 905(i)(1).

''(7) DISTRIBUTOR.—The term 'distributor' as regards a tobacco product means any person who furthers the distribution of a tobacco product, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this chapter.

''(8) ILLICIT TRADE.—The term 'illicit trade' means any practice or conduct prohibited by law which relates to production, shipment, receipt, possession, distribution, sale, or purchase of tobacco products including any practice or conduct intended to facilitate such activity.

''(9) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term in section 4(e) of the Indian Self-Determination and Education Assistance Act.

''(10) LITTLE CIGAR.—The term 'little cigar' means a product that—

''(A) is a tobacco product; and

''(B) meets the definition of the term 'little cigar' in section 3(7) of the Federal Cigarette Labeling and Advertising Act.

''(11) NICOTINE.—The term 'nicotine' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

''(12) PACKAGE.—The term 'package' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

''(13) RETAILER.—The term 'retailer' means any person, government, or entity who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

''(14) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

''(15) SMALL TOBACCO PRODUCT MANUFACTURER.—The term 'small tobacco product manufacturer' means a tobacco product manufacturer that employs fewer than 350 employees. For purposes of determining the number of employees of a manufacturer under the preceding sentence, the employees of a manufacturer are deemed to include the employees of each entity that controls, is controlled by, or is under common control with such manufacturer.

''(16) SMOKE CONSTITUENT.—The term 'smoke constituent' means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the cigarette to the smoke or that is formed by the combustion or heating of tobacco, additives, or other component of the tobacco product.

''(17) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

''(18) STATE; TERRITORY.—The terms 'State' and 'Territory' shall have the meanings given to such terms in section 201.

''(19) TOBACCO PRODUCT MANUFACTURER.—The term 'tobacco product manufacturer' means any person, including any repacker or relabeler, who—

''(A) manufactures, fabricates, assembles, processes, or labels a tobacco product; or

''(B) imports a finished tobacco product for sale or distribution in the United States.

''(20) TOBACCO WAREHOUSE.—

''(A) Subject to subparagraphs (B) and (C), the term 'tobacco warehouse' includes any person—

''(i) who—

''(I) removes foreign material from tobacco leaf through nothing other than a mechanical process;

''(II) humidifies tobacco leaf with nothing other than potable water in the form of steam or mist; or

''(III) de-stems, dries, and packs tobacco leaf for storage and shipment;

''(ii) who performs no other actions with respect to tobacco leaf; and

''(iii) who provides to any manufacturer to whom the person sells tobacco all information related to the person's actions described in clause (i) that is necessary for compliance with this Act.

''(B) The term 'tobacco warehouse' excludes any person who—

''(i) reconstitutes tobacco leaf;

''(ii) is a manufacturer, distributor, or retailer of a tobacco product; or

''(iii) applies any chemical, additive, or substance to the tobacco leaf other than potable water in the form of steam or mist.

''(C) The definition of the term 'tobacco warehouse' in subparagraph (A) shall not apply to the extent to which the Secretary determines, through rulemaking, that regulation under this chapter of the actions described in such subparagraph is appropriate for the protection of the public health.

''(21) UNITED STATES.—The term 'United States' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

''SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

''(a) IN GENERAL.—Tobacco products, including modified risk tobacco products for which an order has been issued in accordance with section 911, shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V.

''(b) APPLICABILITY.—This chapter shall apply to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) IN GENERAL.—Nothing in this chapter, or any policy issued or regulation promulgated thereunder, or in sections 101(a), 102, or 103 of title I, title II, or title III of the Family Smoking Prevention and Tobacco Control Act, shall be construed to affect, expand, or limit the Secretary's authority over (including the authority to determine whether products may be regulated), or the regulation of, products under this Act that are not tobacco products under chapter V or any other chapter.

''(2) LIMITATION OF AUTHORITY.—

''(A) IN GENERAL.—The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer. The exception in this subparagraph shall not apply to a producer of tobacco leaf who grows tobacco under a contract with a tobacco product manufacturer and who is not otherwise engaged in the manufacturing process.

''(C) RULE OF CONSTRUCTION.—Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production.

''(d) RULEMAKING PROCEDURES.—Each rulemaking under this chapter shall be in accordance with chapter 5 of title 5, United States Code. This subsection shall not be construed to affect the rulemaking provisions of section 102(a) of the Family Smoking Prevention and Tobacco Control Act.

''(e) CENTER FOR TOBACCO PRODUCTS.—Not later than 90 days after the date of enactment of this chapter, the Secretary shall establish within the Food and Drug Administration the Center for Tobacco Products, which shall report to the Commissioner of Food and Drugs in the same manner as the other agency centers within the Food and Drug Administration. The Center shall be responsible for the implementation of this chapter and related matters assigned by the Commissioner.

''(f) OFFICE TO ASSIST SMALL TOBACCO PRODUCT MANUFACTURERS.—The Secretary shall establish within the Food and Drug Administration an identifiable office to provide technical and other nonfinancial assistance to small tobacco product manufacturers to assist them in complying with the requirements of this Act.

''(g) CONSULTATION PRIOR TO RULEMAKING.—Prior to promulgating rules under this chapter, the Secretary shall endeavor to consult with other Federal agencies as appropriate.

''SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is

otherwise contaminated by any added poisonous or added deleterious substance that may render the product injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

''(3) its package is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

''(4) the manufacturer or importer of the tobacco product fails to pay a user fee assessed to such manufacturer or importer pursuant to section 919 by the date specified in section 919 or by the 30th day after final agency action on a resolution of any dispute as to the amount of such fee;

''(5) it is, or purports to be or is represented as, a tobacco product which is subject to a tobacco product standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(6)(A) it is required by section 910(a) to have premarket review and does not have an order in effect under section 910(c)(1)(A)(i); or

''(B) it is in violation of an order under section 910(c)(1)(A);

''(7) the methods used in, or the facilities or controls used for, its manufacture, packing, or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(8) it is in violation of section 911.

''SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor;

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

''(C) an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco; and

''(D) the statement required under section 920(a),

except that under subparagraph (B) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in an establishment not duly registered under section 905(b), 905(c), 905(d), or 905(h), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold or distributed in violation of regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

''(A) a true statement of the tobacco product's established name as described in paragraph (4), printed prominently; and

''(B) a brief statement of—

''(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

''(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is appropriate to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

''(9) if it is a tobacco product subject to a tobacco product standard established under section 907, unless it bears such labeling as may be prescribed in such tobacco product standard; or

''(10) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908; or

''(B) to furnish any material or information required under section 909.

''(b) PRIOR APPROVAL OF LABEL STATEMENTS.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement, except for modified risk tobacco products as provided in section 911. No advertisement of a tobacco product published after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall, with respect to the language of label statements as prescribed under section 4 of the Federal Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 or the regulations issued under such sections, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act.

''SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

''(a) REQUIREMENT.—Each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information:

''(1) Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand.

''(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Secretary in accordance with section 4(e) of the Federal Cigarette Labeling and Advertising Act.

''(3) Beginning 3 years after the date of enactment of this Act, a listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand. Effective beginning 3 years after the date of enactment of this chapter, the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

''(4) Beginning 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, all documents developed after the date of enactment of the Family Smoking Prevention and Tobacco Control Act that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives.

''(b) DATA SUBMISSION.—At the request of the Secretary, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit the following:

''(1) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, behavioral, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

''(2) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(3) Any or all documents (including underlying scientific or financial information) relating to marketing research involving the use of tobacco products or marketing practices and the effectiveness of such practices used by tobacco manufacturers and distributors.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(c) TIME FOR SUBMISSION.—

''(1) IN GENERAL.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the manufacturer of such product shall provide the information required under subsection (a).

''(2) DISCLOSURE OF ADDITIVE.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive or increases the quantity of an existing tobacco additive, the manufacturer shall, except as provided in paragraph (3), at least 90 days prior to such action so advise the Secretary in writing.

''(3) DISCLOSURE OF OTHER ACTIONS.—If at any time a tobacco product manufacturer eliminates or decreases an existing additive, or adds or increases an additive that has by regulation been designated by the Secretary as an additive that is not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use, the manufacturer shall within 60 days of such action so advise the Secretary in writing.

''(d) DATA LIST.—

''(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Secretary) the list established under subsection (e).

''(2) CONSUMER RESEARCH.—The Secretary shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

''(e) DATA COLLECTION.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish, and periodically revise as appropriate, a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand. The Secretary shall publish a public notice requesting the submission by interested persons of scientific and other information concerning the harmful and potentially harmful constituents in tobacco products and tobacco smoke.

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—In this section:

''(1) MANUFACTURE, PREPARATION, COMPOUNDING, OR PROCESSING.—The term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user.

''(2) NAME.—The term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year, every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person. If the enactment of this Act occurs in the second half of the calendar year, the Secretary shall designate a date no later than 6 months into the subsequent calendar year by which registration pursuant to this subsection shall occur.

''(c) REGISTRATION BY NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment registered with the Secretary under this section shall be subject to inspection under section 704 or subsection (h), and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by 1 or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) REGISTRATION BY FOREIGN ESTABLISHMENTS.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, shall register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), (d), or (h) shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which have not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

''(A) in the case of a tobacco product contained in the applicable list with respect to which a tobacco product standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

''(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

''(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a tobacco product standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

''(2) CONSULTATION WITH RESPECT TO FORMS.—The Secretary shall consult with the Secretary of the Treasury in developing the forms to be used for registration under this section to minimize the burden on those persons required to register with both the Secretary and the Tax and Trade Bureau of the Department of the Treasury.

''(3) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

''(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1). A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

''(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

''(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of February 15, 2007, shall, at least 90 days prior to making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall prescribe)—

''(A) the basis for such person's determination that—

''(i) the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of February 15, 2007, or to a tobacco product that the Secretary has previously determined, pursuant to subsection (a)(3) of section 910, is substantially equivalent and that is in compliance with the requirements of this Act; or

''(ii) the tobacco product is modified within the meaning of paragraph (3), the modifications are to a product that is commercially marketed and in compliance with the requirements of this Act, and all of the modifications are covered by exemptions granted by the Secretary pursuant to paragraph (3); and

''(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''(2) APPLICATION TO CERTAIN POST-FEBRUARY 15, 2007, PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after February 15, 2007, and prior to the date that is 21 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 21 months after such date of enactment.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Secretary may exempt from the requirements of this subsection relating to the demonstration that a tobacco product is substantially equivalent within the meaning of section 910, tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if the Secretary determines that—

''(i) such modification would be a minor modification of a tobacco product that can be sold under this Act;

''(ii) a report under this subsection is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and

''(iii) an exemption is otherwise appropriate.

''(B) REGULATIONS.—Not later than 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations to implement this paragraph.

''SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, section 911, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, section 911, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking or other notification under section 907, 908, 909, 910, or 911 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefore.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 903, 904, 907, 908, 909, 910, 911, or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) IN GENERAL.—The Secretary may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. The Secretary may by regulation impose restrictions on the advertising and promotion of a tobacco product consistent with and to full extent permitted by the first amendment to the Constitution. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such regulation may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) LIMITATIONS.—

''(A) IN GENERAL.—No restrictions under paragraph (1) may—

''(i) prohibit the sale of any tobacco product in face-to-face transactions by a specific category of retail outlets; or

''(ii) establish a minimum age of sale of tobacco products to any person older than 18 years of age.

''(B) MATCHBOOKS.—For purposes of any regulations issued by the Secretary, matchbooks of conventional size containing not more than 20 paper matches, and which are customarily given away for free with the purchase of tobacco products, shall be considered as adult-written publications which shall be permitted to contain advertising. Notwithstanding the preceding sentence, if the Secretary finds that such treatment of matchbooks is not appropriate for the protection of the public health, the Secretary may determine by regulation that matchbooks shall not be considered adult-written publications.

''(4) REMOTE SALES.—

''(A) IN GENERAL.—The Secretary shall—

''(i) within 18 months after the date of enactment of this chapter, promulgate regulations regarding the sale and distribution of tobacco products that occur through means other than a direct, face-to-face exchange between a retailer and a consumer in order to prevent the sale and distribution of tobacco products to individuals who have not attained the minimum age established by applicable law for the purchase of such products, including requirements for age verification; and

''(ii) within 2 years after such date of enactment, issue regulations to address the promotion and marketing of tobacco products that are sold or distributed through means other than a direct, face-to-face exchange between a retailer and a consumer in order to protect individuals who have not attained the minimum age established by applicable law for the purchase of such products.

''(B) RELATION TO OTHER AUTHORITY.—Nothing in this paragraph limits the authority of the Secretary to take additional actions under the other paragraphs of this subsection.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) IN GENERAL.—In applying manufacturing restrictions to tobacco, the Secretary shall, in accordance with subparagraph (B), prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology, as prescribed in such regulations to assure that the public health is protected and that the tobacco product is in compliance with this chapter. Such regulations may provide for the testing of raw tobacco for pesticide chemical residues regardless of whether a tolerance for such chemical residues has been established.

''(B) REQUIREMENTS.—The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the Tobacco Products Scientific Advisory Committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A);

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices; and

''(v) not require any small tobacco product manufacturer to comply with a regulation under subparagraph (A) for at least 4 years following the effective date established by the Secretary for such regulation.

''(2) EXEMPTIONS; VARIANCES.—

''(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

''(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

''(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

''(iii) contain such other information as the Secretary shall prescribe.

''(B) REFERRAL TO THE TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—The Secretary may refer to the Tobacco Products Scientific Advisory Committee any petition submitted under subparagraph (A). The Tobacco Products Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

''(i) the date the petition was submitted to the Secretary under subparagraph (A); or

''(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

''(C) APPROVAL.—The Secretary may approve—

''(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

''(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

''(D) CONDITIONS.—An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

''(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the end of the 3-year period following the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

''(f) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes.

''SEC. 907. TOBACCO PRODUCT STANDARDS.

''(a) IN GENERAL.—

''(1) SPECIAL RULES.—

''(A) SPECIAL RULE FOR CIGARETTES.—Beginning 3 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. Nothing in this subparagraph shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol or any artificial or natural flavor, herb, or spice not specified in this subparagraph.

''(B) ADDITIONAL SPECIAL RULE.—A tobacco product manufactured in or imported into the United States shall not contain foreign-grown tobacco that—

''(i) was grown or processed using a pesticide chemical that is not approved under applicable Federal law for use in domestic tobacco farming and processing; or

''(ii) in the case of a pesticide chemical that is so approved, was grown or processed using the pesticide chemical in a manner inconsistent with the approved labeling for use of the pesticide chemical in domestic tobacco farming and processing.

''(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco product standards in paragraph (1) in accordance with subsection (c).

''(3) TOBACCO PRODUCT STANDARDS.—

''(A) IN GENERAL.—The Secretary may adopt tobacco product standards in addition to those in paragraph (1) if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health.

''(B) DETERMINATIONS.—

''(i) CONSIDERATIONS.—In making a finding described in subparagraph (A), the Secretary shall consider scientific evidence concerning—

''(I) the risks and benefits to the population as a whole, including users and nonusers of tobacco products, of the proposed standard;

''(II) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(III) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(ii) ADDITIONAL CONSIDERATIONS.—In the event that the Secretary makes a determination, set forth in a proposed tobacco product standard in a proposed rule, that it is appropriate for the protection of public health to require the reduction or elimination of an additive, constituent (including a smoke constituent), or other component of a tobacco product because the Secretary has found that the additive, constituent, or other component is or may be harmful, any party objecting to the proposed standard on the ground that the proposed standard will not reduce or eliminate the risk of illness or injury may provide for the Secretary's consideration scientific evidence that demonstrates that the proposed standard will not reduce or eliminate the risk of illness or injury.

''(4) CONTENT OF TOBACCO PRODUCT STANDARDS.—A tobacco product standard established under this section for a tobacco product—

''(A) shall include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents, including smoke constituents, or harmful components of the product; or

''(iii) relating to any other requirement under subparagraph (B);

''(B) shall, where appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

''(iii) provisions for the measurement of the tobacco product characteristics of the tobacco product;

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d);

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product; and

''(D) shall require tobacco products containing foreign-grown tobacco to meet the same standards applicable to tobacco products containing domestically grown tobacco.

''(5) PERIODIC REEVALUATION OF TOBACCO PRODUCT STANDARDS.—The Secretary shall provide for periodic evaluation of tobacco product standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (4)(B) by any person.

''(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall endeavor to—

''(A) use personnel, facilities, and other technical support available in other Federal agencies;

''(B) consult with other Federal agencies concerned with standard setting and other nationally or internationally recognized standard-setting entities; and

''(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Secretary's judgment can make a significant contribution.

''(b) CONSIDERATIONS BY SECRETARY.—

''(1) TECHNICAL ACHIEVABILITY.—The Secretary shall consider information submitted in connection with a proposed standard regarding the technical achievability of compliance with such standard.

''(2) OTHER CONSIDERATIONS.—The Secretary shall consider all other information submitted in connection with a proposed standard, including information concerning the countervailing effects of the tobacco product standard on the health of adolescent tobacco users, adult tobacco users, or nontobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand.

''(c) PROPOSED STANDARDS.—

''(1) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any tobacco product standard.

''(2) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

''(A) set forth a finding with supporting justification that the tobacco product standard is appropriate for the protection of the public health;

''(B) invite interested persons to submit a draft or proposed tobacco product standard for consideration by the Secretary;

''(C) invite interested persons to submit comments on structuring the standard so that it does not advantage foreign-grown tobacco over domestically grown tobacco; and

''(D) invite the Secretary of Agriculture to provide any information or analysis which the Secretary of Agriculture believes is relevant to the proposed tobacco product standard.

''(3) FINDING.—A notice of proposed rulemaking for the revocation of a tobacco product standard shall set forth a finding with supporting justification that the tobacco product standard is no longer appropriate for the protection of the public health.

''(4) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

''(d) PROMULGATION.—

''(1) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under subsection (c) respecting a tobacco product standard and after consideration of comments submitted under subsections (b) and (c) and any report from the Tobacco Products Scientific Advisory Committee, if the Secretary determines that the standard would be appropriate for the protection of the public health, the Secretary shall—

''(A) promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in subsection (c); or

''(B) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(2) EFFECTIVE DATE.—A regulation establishing a tobacco product standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade. In establishing such effective date or dates, the Secretary shall consider information submitted in connection with a proposed product standard by interested parties, including manufacturers and tobacco growers, regarding the technical achievability of compliance with the standard, and including information concerning the existence of patents that make it impossible to comply in the timeframe envisioned in the proposed standard. If the Secretary determines, based on the Secretary's evaluation of submitted comments, that a product standard can be met only by manufacturers requiring substantial changes to the methods of farming the domestically grown tobacco used by the manufacturer, the effective date of that product standard shall be not less than 2 years after the date of publication of the final regulation establishing the standard.

''(3) LIMITATION ON POWER GRANTED TO THE FOOD AND DRUG ADMINISTRATION.—Because of the importance of a decision of the Secretary to issue a regulation—

''(A) banning all cigarettes, all smokeless tobacco products, all little cigars, all cigars other than little cigars, all pipe tobacco, or all roll-your-own tobacco products; or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

the Secretary is prohibited from taking such actions under this Act.

''(4) AMENDMENT; REVOCATION.—

''(A) AUTHORITY.—The Secretary, upon the Secretary's own initiative or upon petition of an interested person, may by a regulation, promulgated in accordance with the requirements of subsection (c) and paragraph (2), amend or revoke a tobacco product standard.

''(B) EFFECTIVE DATE.—The Secretary may declare a proposed amendment of a tobacco product standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

''(5) REFERRAL TO ADVISORY COMMITTEE.—

''(A) IN GENERAL.—The Secretary may refer a proposed regulation for the establishment, amendment, or revocation of a tobacco product standard to the Tobacco Products Scientific Advisory Committee for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment.

''(B) INITIATION OF REFERRAL.—The Secretary may make a referral under this paragraph—

''(i) on the Secretary's own initiative; or

''(ii) upon the request of an interested person that—

''(I) demonstrates good cause for the referral; and

''(II) is made before the expiration of the period for submission of comments on the proposed regulation.

''(C) PROVISION OF DATA.—If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Secretary shall provide the Advisory Committee with the data and information on which such proposed regulation is based.

''(D) REPORT AND RECOMMENDATION.—The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation under this paragraph and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation.

''(E) PUBLIC AVAILABILITY.—The Secretary shall make a copy of each report and recommendation under subparagraph (D) publicly available.

''(e) MENTHOL CIGARETTES.—

''(1) REFERRAL; CONSIDERATIONS.—Immediately upon the establishment of the Tobacco Products Scientific Advisory Committee under section 917(a), the Secretary shall refer to the Committee for report and recommendation, under section 917(c)(4), the issue of the impact of the use of menthol in cigarettes on the public health, including such use among African Americans, Hispanics, and other racial and ethnic minorities. In its review, the Tobacco Products Scientific Advisory Committee shall address the considerations listed in subsections (a)(3)(B)(i) and (b).

''(2) REPORT AND RECOMMENDATION.—Not later than 1 year after its establishment, the Tobacco Product Scientific Advisory Committee shall submit to the Secretary the report and recommendations required pursuant to paragraph (1).

''(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol.

''SEC. 908. NOTIFICATION AND OTHER REMEDIES.

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) NOTICE.—An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a).

''SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) EXCEPTION.—No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

''SEC. 910. APPLICATION FOR REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) NEW TOBACCO PRODUCT DEFINED.—For purposes of this section the term 'new tobacco product' means—

''(A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007; or

''(B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007.

''(2) PREMARKET REVIEW REQUIRED.—

''(A) NEW PRODUCTS.—An order under subsection (c)(1)(A)(i) for a new tobacco product is required unless—

''(i) the manufacturer has submitted a report under section 905(j); and the Secretary has issued an order that the tobacco product—

''(I) is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of February 15, 2007; and

''(II) is in compliance with the requirements of this Act; or

''(ii) the tobacco product is exempt from the requirements of section 905(j) pursuant to a regulation issued under section 905(j)(3).

''(B) APPLICATION TO CERTAIN POST-FEBRUARY 15, 2007, PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—

''(i) that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after February 15, 2007, and prior to the date that is 21 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act; and

''(ii) for which a report was submitted under section 905(j) within such 21-month period,

except that subparagraph (A) shall apply to the tobacco product if the Secretary issues an order that the tobacco product is not substantially equivalent.

''(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) IN GENERAL.—In this section and section 905(j), the term 'substantially equivalent' or 'substantial equivalence' means, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) CHARACTERISTICS.—In subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) LIMITATION.—A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(4) HEALTH INFORMATION.—

''(A) SUMMARY.—As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) REQUIRED INFORMATION.—Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application under this section shall contain—

''(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any tobacco product standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such tobacco product standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERRAL TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) may, upon the request of an applicant,

refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Secretary may establish) of a report and recommendation respecting the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) IN GENERAL.—As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b), the Secretary, after considering the report and recommendation submitted under subsection (b)(2), shall—

''(i) issue an order that the new product may be introduced or delivered for introduction into interstate commerce if the Secretary finds that none of the grounds specified in paragraph (2) of this subsection applies; or

''(ii) issue an order that the new product may not be introduced or delivered for introduction into interstate commerce if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) RESTRICTIONS ON SALE AND DISTRIBUTION.—An order under subparagraph (A)(i) may require that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPLICATION.—The Secretary shall deny an application submitted under subsection (b) if, upon the basis of the

information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a tobacco product standard in effect under section 907, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to remove such application from deniable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether the marketing of a tobacco product for which an application has been submitted is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(5) BASIS FOR ACTION.—

''(A) INVESTIGATIONS.—For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include 1 or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) OTHER EVIDENCE.—If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product, the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from the Tobacco Products Scientific Advisory Committee, and after due notice and opportunity for informal hearing for a tobacco product for which an order was issued under subsection (c)(1)(A)(i), issue an order withdrawing the order if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was reviewed, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was reviewed, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when such order was issued, that such tobacco product is not shown to conform in all respects to a tobacco product standard which is in effect under section 907, compliance with which was a condition to the issuance of an order relating to the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing an order issued pursuant to subsection (c)(1)(A)(i) may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with section 912.

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an order would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the authority of the manufacturer to market the product. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

''(f) RECORDS.—

''(1) ADDITIONAL INFORMATION.—In the case of any tobacco product for which an order issued pursuant to subsection (c)(1)(A)(i) for an application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, as the Secretary may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such order.

''(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge of custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

''(g) INVESTIGATIONAL TOBACCO PRODUCT EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from the provisions of this chapter under such conditions as the Secretary may by regulation prescribe.

''SEC. 911. MODIFIED RISK TOBACCO PRODUCTS.

''(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless an order issued pursuant to subsection (g) is effective with respect to such product.

''(b) DEFINITIONS.—In this section:

''(1) MODIFIED RISK TOBACCO PRODUCT.—The term 'modified risk tobacco product' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

''(2) SOLD OR DISTRIBUTED.—

''(A) IN GENERAL.—With respect to a tobacco product, the term 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' means a tobacco product—

''(i) the label, labeling, or advertising of which represents explicitly or implicitly that—

''(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

''(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

''(III) the tobacco product or its smoke does not contain or is free of a substance;

''(ii) the label, labeling, or advertising of which uses the descriptors 'light', 'mild', or 'low' or similar descriptors; or

''(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling, or advertising, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''(B) LIMITATION.—No tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products', except as described in subparagraph (A).

''(C) SMOKELESS TOBACCO PRODUCT.—No smokeless tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' solely because its label, labeling, or advertising uses the following phrases to describe such product and its use: 'smokeless tobacco', 'smokeless tobacco product', 'not consumed by smoking', 'does not produce smoke', 'smokefree', 'smoke-free', 'without smoke', 'no smoke', or 'not smoke'.

''(3) EFFECTIVE DATE.—The provisions of paragraph (2)(A)(ii) shall take effect 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act for those products whose label, labeling, or advertising contains the terms described in such paragraph on such date of enactment. The effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with paragraph (2)(A)(ii).

''(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a modified risk tobacco product under this section if it has been approved as a drug or device by the Food and Drug Administration and is subject to the requirements of chapter V.

''(d) FILING.—Any person may file with the Secretary an application for a modified risk tobacco product. Such application shall include—

''(1) a description of the proposed product and any proposed advertising and labeling;

''(2) the conditions for using the product;

''(3) the formulation of the product;

''(4) sample product labels and labeling;

''(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

''(6) data and information on how consumers actually use the tobacco product; and

''(7) such other information as the Secretary may require.

''(e) PUBLIC AVAILABILITY.—The Secretary shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

''(f) ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall refer to the Tobacco Products Scientific Advisory Committee any application submitted under this section.

''(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to the Tobacco Products Scientific Advisory Committee under paragraph (1), the Advisory Committee shall report its recommendations on the application to the Secretary.

''(g) MARKETING.—

''(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary shall, with respect to an application submitted under this section, issue an order that a modified risk product may be commercially marketed only if the Secretary determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

''(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

''(B) benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

''(A) IN GENERAL.—The Secretary may issue an order that a tobacco product may be introduced or delivered for introduction into interstate commerce, pursuant to an application under this section, with respect to a tobacco product that may not be commercially marketed under paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

''(i) such order would be appropriate to promote the public health;

''(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under subsection (b) is limited to an explicit or implicit representation that such tobacco product or its smoke does not contain or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke;

''(iii) scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards set forth in paragraph (1); and

''(iv) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is reasonably likely in subsequent studies.

''(B) ADDITIONAL FINDINGS REQUIRED.—To issue an order under subparagraph (A) the Secretary must also find that the applicant has demonstrated that—

''(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

''(ii) the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the reasonably likely overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

''(iii) testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product—

''(I) is or has been demonstrated to be less harmful; or

''(II) presents or has been demonstrated to present less of a risk of disease than 1 or more other commercially marketed tobacco products; and

''(iv) issuance of an order with respect to the application is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(C) CONDITIONS OF MARKETING.—

''(i) IN GENERAL.—Applications subject to an order under this paragraph shall be limited to a term of not more than 5 years, but may be renewed upon a finding by the Secretary that the requirements of this paragraph continue to be satisfied based on the filing of a new application.

''(ii) AGREEMENTS BY APPLICANT.—An order under this paragraph shall be conditioned on the applicant's agreement to conduct postmarket surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the order on consumer perception, behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the order was based in accordance with a protocol approved by the Secretary.

''(iii) ANNUAL SUBMISSION.—The results of such postmarket surveillance and studies described in clause (ii) shall be submitted annually.

''(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

''(A) the scientific evidence submitted by the applicant; and

''(B) scientific evidence and other information that is made available to the Secretary.

''(4) BENEFIT TO HEALTH OF INDIVIDUALS AND OF POPULATION AS A WHOLE.—In making the determinations under paragraphs (1) and (2), the Secretary shall take into account—

''(A) the relative health risks to individuals of the tobacco product that is the subject of the application;

''(B) the increased or decreased likelihood that existing users of tobacco products who would otherwise stop using such products will switch to the tobacco product that is the subject of the application;

''(C) the increased or decreased likelihood that persons who do not use tobacco products will start using the tobacco product that is the subject of the application;

''(D) the risks and benefits to persons from the use of the tobacco product that is the subject of the application as compared to the use of products for smoking cessation approved under chapter V to treat nicotine dependence; and

''(E) comments, data, and information submitted by interested persons.

''(h) ADDITIONAL CONDITIONS FOR MARKETING.—

''(1) MODIFIED RISK PRODUCTS.—The Secretary shall require for the marketing of a product under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

''(2) COMPARATIVE CLAIMS.—

''(A) IN GENERAL.—The Secretary may require for the marketing of a product under this subsection that a claim comparing a tobacco product to 1 or more other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3 brands of an established regular tobacco product).

''(B) QUANTITATIVE COMPARISONS.—The Secretary may also require, for purposes of subparagraph (A), that the percent (or fraction) of change and identity of the reference tobacco product and a quantitative comparison of the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

''(3) LABEL DISCLOSURE.—

''(A) IN GENERAL.—The Secretary may require the disclosure on the label of other substances in the tobacco product, or substances that may be produced by the consumption of that tobacco product, that may affect a disease or health-related condition or may increase the risk of other diseases or health-related conditions associated with the use of tobacco products.

''(B) CONDITIONS OF USE.—If the conditions of use of the tobacco product may affect the risk of the product to human health, the Secretary may require the labeling of conditions of use.

''(4) TIME.—An order issued under subsection (g)(1) shall be effective for a specified period of time.

''(5) ADVERTISING.—The Secretary may require, with respect to a product for which an applicant obtained an order under subsection (g)(1), that the product comply with requirements relating to advertising and promotion of the tobacco product.

''(i) POSTMARKET SURVEILLANCE AND STUDIES.—

''(1) IN GENERAL.—The Secretary shall require, with respect to a product for which an applicant obtained an order under subsection (g)(1), that the applicant conduct postmarket surveillance and studies for such a tobacco product to determine the impact of the order issuance on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the order was based, and to provide information that the Secretary determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of postmarket surveillance and studies shall be submitted to the Secretary on an annual basis.

''(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of the data or other information designated by the Secretary as necessary to protect the public health.

''(j) WITHDRAWAL OF AUTHORIZATION.—The Secretary, after an opportunity for an informal hearing, shall withdraw an order under subsection (g) if the Secretary determines that—

''(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Secretary can no longer make the determinations required under subsection (g);

''(2) the application failed to include material information or included any untrue statement of material fact;

''(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

''(A) a tobacco product standard is established pursuant to section 907;

''(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

''(C) any postmarket surveillance or studies reveal that the order is no longer consistent with the protection of the public health;

''(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or subsection (i); or

''(5) the applicant failed to meet a condition imposed under subsection (h).

''(k) CHAPTER IV OR V.—A product for which the Secretary has issued an order pursuant to subsection (g) shall not be subject to chapter IV or V.

''(l) IMPLEMENTING REGULATIONS OR GUIDANCE.—

''(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

''(A) to the extent that adequate scientific evidence exists, establish minimum standards for scientific studies needed prior to issuing an order under subsection (g) to show that a substantial reduction in morbidity or mortality among individual tobacco users occurs for products described in subsection (g)(1) or is reasonably likely for products described in subsection (g)(2);

''(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

''(C) establish minimum standards for postmarket studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

''(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception;

''(E) require that data from the required studies and surveillance be made available to the Secretary prior to the decision on renewal of a modified risk tobacco product; and

''(F) establish a reasonable timetable for the Secretary to review an application under this section.

''(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) shall be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

''(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

''(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 910 and which the applicant seeks to commercially market under this section.

''(m) DISTRIBUTORS.—Except as provided in this section, no distributor may take any action, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, with respect to a tobacco product that would reasonably be expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''SEC. 912. JUDICIAL REVIEW.

''(a) RIGHT TO REVIEW.—

''(1) IN GENERAL.—Not later than 30 days after—

''(A) the promulgation of a regulation under section 907 establishing, amending, or revoking a tobacco product standard; or

''(B) a denial of an application under section 910(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

''(2) REQUIREMENTS.—

''(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Secretary.

''(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Secretary shall file in the court in which such petition was filed—

''(i) the record of the proceedings on which the regulation or order was based; and

''(ii) a statement of the reasons for the issuance of such a regulation or order.

''(C) DEFINITION OF RECORD.—In this section, the term 'record' means—

''(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

''(ii) all information submitted to the Secretary with respect to such regulation or order;

''(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

''(iv) any hearing held with respect to such regulation or order; and

''(v) any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

''(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

''(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 906, 907, 908, 909, 910, or 916 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

''SEC. 913. EQUAL TREATMENT OF RETAIL OUTLETS.

''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.

''SEC. 914. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

''(a) JURISDICTION.—

''(1) IN GENERAL.—Except where expressly provided in this chapter, nothing in this chapter shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

''(2) ENFORCEMENT.—Any advertising that violates this chapter or a provision of the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act and shall be considered a violation of a rule promulgated under section 18 of that Act.

''(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986—

''(1) the Chairman of the Federal Trade Commission shall coordinate with the Secretary concerning the enforcement of such Act as such enforcement relates to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco; and

''(2) the Secretary shall consult with the Chairman of such Commission in revising the label statements and requirements under such sections.

''SEC. 915. REGULATION REQUIREMENT.

''(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 36 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall promulgate regulations under this Act that meet the requirements of subsection (b).

''(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a)—

''(1) shall require testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and subbrand that the Secretary determines should be tested to protect the public health, provided that, for purposes of the testing requirements of this paragraph, tobacco products manufactured and sold by a single tobacco product manufacturer that are identical in all respects except the labels, packaging design, logo, trade dress, trademark, brand name, or any combination thereof, shall be considered as a single brand; and

''(2) may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising or other appropriate means, and make disclosures regarding the results of the testing of other constituents, including smoke constituents, ingredients, or additives, that the Secretary determines should be disclosed to the public to protect the public health and will not mislead consumers about the risk of tobacco-related disease.

''(c) AUTHORITY.—The Secretary shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

''(d) SMALL TOBACCO PRODUCT MANUFACTURERS.—

''(1) FIRST COMPLIANCE DATE.—The initial regulations promulgated under subsection (a) shall not impose requirements on small tobacco product manufacturers before the later of—

''(A) the end of the 2-year period following the final promulgation of such regulations; and

''(B) the initial date set by the Secretary for compliance with such regulations by manufacturers that are not small tobacco product manufacturers.

''(2) TESTING AND REPORTING INITIAL COMPLIANCE PERIOD.—

''(A) 4-YEAR PERIOD.—The initial regulations promulgated under subsection (a) shall give each small tobacco product manufacturer a 4-year period over which to conduct testing and reporting for all of its tobacco products. Subject to paragraph (1), the end of the first year of such 4-year period shall coincide with the initial date of compliance under this section set by the Secretary with respect to manufacturers that are not small tobacco product manufacturers or the end of the 2-year period following the final promulgation of such regulations, as described in paragraph (1)(A). A small tobacco product manufacturer shall be required—

''(i) to conduct such testing and reporting for 25 percent of its tobacco products during each year of such 4-year period; and

''(ii) to conduct such testing and reporting for its largest-selling tobacco products (as determined by the Secretary) before its other tobacco products, or in such other order of priority as determined by the Secretary.

''(B) CASE-BY-CASE DELAY.—Notwithstanding subparagraph (A), the Secretary may, on a case-by-case basis, delay the date by which an individual small tobacco product manufacturer must conduct testing and reporting for its tobacco products under this section based upon a showing of undue hardship to such manufacturer. Notwithstanding the preceding sentence, the Secretary shall not extend the deadline for a small tobacco product manufacturer to conduct testing and reporting for all of its tobacco products beyond a total of 5 years after the initial date of compliance under this section set by the Secretary with respect to manufacturers that are not small tobacco product manufacturers.

''(3) SUBSEQUENT AND ADDITIONAL TESTING AND REPORTING.—The regulations promulgated under subsection (a) shall provide that, with respect to any subsequent or additional testing and reporting of tobacco products required under this section, such testing and reporting by a small tobacco product manufacturer shall be conducted in accordance with the timeframes described in paragraph (2)(A), except that, in the case of a new product, or if there has been a modification described in section 910(a)(1)(B) of any product of a small tobacco product manufacturer since the last testing and reporting required under this section, the Secretary shall require that any subsequent or additional testing and reporting be conducted in accordance with the same timeframe applicable to manufacturers that are not small tobacco product manufacturers.

''(4) JOINT LABORATORY TESTING SERVICES.—The Secretary shall allow any 2 or more small tobacco product manufacturers to join together to purchase laboratory testing services required by this section on a group basis in order to ensure that such manufacturers receive access to, and fair pricing of, such testing services.

''(e) EXTENSIONS FOR LIMITED LABORATORY CAPACITY.—

''(1) IN GENERAL.—The regulations promulgated under subsection (a) shall provide that a small tobacco product manufacturer shall not be considered to be in violation of this section before the deadline applicable under paragraphs (3) and (4), if—

''(A) the tobacco products of such manufacturer are in compliance with all other requirements of this chapter; and

''(B) the conditions described in paragraph (2) are met.

''(2) CONDITIONS.—Notwithstanding the requirements of this section, the Secretary may delay the date by which a small tobacco product manufacturer must be in compliance with the testing and reporting required by this section until such time as the testing is reported if, not later than 90 days before the deadline for reporting in accordance with this section, a small tobacco product manufacturer provides evidence to the Secretary demonstrating that—

''(A) the manufacturer has submitted the required products for testing to a laboratory and has done so sufficiently in advance of the deadline to create a reasonable expectation of completion by the deadline;

''(B) the products currently are awaiting testing by the laboratory; and

''(C) neither that laboratory nor any other laboratory is able to complete testing by the deadline at customary, nonexpedited testing fees.

''(3) EXTENSION.—The Secretary, taking into account the laboratory testing capacity that is available to tobacco product manufacturers, shall review and verify the evidence submitted by a small tobacco product manufacturer in accordance with paragraph (2). If the Secretary finds that the conditions described in such paragraph are met, the Secretary shall notify the small tobacco product manufacturer that the manufacturer shall not be considered to be in violation of the testing and reporting requirements of this section until the testing is reported or until 1 year after the reporting deadline has passed, whichever occurs sooner. If, however, the Secretary has not made a finding before the reporting deadline, the manufacturer shall not be considered to be in violation of such requirements until the Secretary finds that the conditions described in paragraph (2) have not been met, or until 1 year after the reporting deadline, whichever occurs sooner.

''(4) ADDITIONAL EXTENSION.—In addition to the time that may be provided under paragraph (3), the Secretary may provide further extensions of time, in increments of no more than 1 year, for required testing and reporting to occur if the Secretary determines, based on evidence properly and timely submitted by a small tobacco product manufacturer in accordance with paragraph (2), that a lack of available laboratory capacity prevents the manufacturer from completing the required testing during the period described in paragraph (3).

''(f) RULE OF CONSTRUCTION.—Nothing in subsection (d) or (e) shall be construed to authorize the extension of any deadline, or to otherwise affect any timeframe, under any provision of this Act or the Family Smoking Prevention and Tobacco Control Act other than this section.

''SEC. 916. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) IN GENERAL.—

''(1) PRESERVATION.—Except as provided in paragraph (2)(A), nothing in this chapter, or rules promulgated under this chapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this chapter shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) IN GENERAL.—No State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this chapter relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.

''(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 552(b)(4) of title 5, United States Code, shall be treated

as a trade secret and confidential information by the State.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''SEC. 917. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 12-member advisory committee, to be known as the Tobacco Products Scientific Advisory Committee (in this section referred to as the 'Advisory Committee').

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—

''(A) MEMBERS.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

''(i) 7 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

''(ii) 1 individual who is an officer or employee of a State or local government or of the Federal Government;

''(iii) 1 individual as a representative of the general public;

''(iv) 1 individual as a representative of the interests of the tobacco manufacturing industry;

''(v) 1 individual as a representative of the interests of the small business tobacco manufacturing industry, which position may be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Advisory Committee; and

''(vi) 1 individual as a representative of the interests of the tobacco growers.

''(B) NONVOTING MEMBERS.—The members of the committee appointed under clauses (iv), (v), and (vi) of subparagraph (A) shall serve as consultants to those described in clauses (i) through (iii) of subparagraph (A) and shall be nonvoting representatives.

''(C) CONFLICTS OF INTEREST.—No members of the committee, other than members appointed pursuant to clauses (iv), (v), and (vi) of subparagraph (A) shall, during the member's tenure on the committee or for the 18-month period prior to becoming such a member, receive any salary, grants, or other payments or support from any business that manufactures, distributes, markets, or sells cigarettes or other tobacco products.

''(2) LIMITATION.—The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this Act. The Secretary may appoint Federal officials as ex officio members.

''(3) CHAIRPERSON.—The Secretary shall designate 1 of the members appointed under clauses (i), (ii), and (iii) of paragraph (1)(A) to serve as chairperson.

''(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

''(1) as provided in this chapter;

''(2) on the effects of the alteration of the nicotine yields from tobacco products;

''(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

''(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

''(d) COMPENSATION; SUPPORT; FACA.—

''(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Secretary, which may not exceed the daily equivalent of the rate in effect under the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(2) ADMINISTRATIVE SUPPORT.—The Secretary shall furnish the Advisory Committee clerical and other assistance.

''(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act does not apply to the Advisory Committee.

''(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

''SEC. 918. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

''(a) IN GENERAL.—The Secretary shall—

''(1) at the request of the applicant, consider designating products for smoking cessation, including nicotine replacement products as fast track research and approval products within the meaning of section 506;

''(2) consider approving the extended use of nicotine replacement products (such as nicotine patches, nicotine gum, and nicotine lozenges) for the treatment of tobacco dependence; and

''(3) review and consider the evidence for additional indications for nicotine replacement products, such as for craving relief or relapse prevention.

''(b) REPORT ON INNOVATIVE PRODUCTS.—

''(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary, after consultation with recognized scientific, medical, and public health experts (including both Federal agencies and nongovernmental entities, the Institute of Medicine of the National Academy of Sciences, and the Society for Research on Nicotine and Tobacco), shall submit to the Congress a report that examines how best to regulate, promote, and encourage the development of innovative products and treatments (including nicotine-based and non-nicotine-based products and treatments) to better achieve, in a manner that best protects and promotes the public health—

''(A) total abstinence from tobacco use;

''(B) reductions in consumption of tobacco; and

''(C) reductions in the harm associated with continued tobacco use.

''(2) RECOMMENDATIONS.—The report under paragraph (1) shall include the recommendations of the Secretary on how the Food and Drug Administration should coordinate and facilitate the exchange of information on such innovative products and treatments among relevant offices and centers within the Administration and within the National Institutes of Health, the Centers for Disease Control and Prevention, and other relevant agencies.

''SEC. 919. USER FEES.

''(a) ESTABLISHMENT OF QUARTERLY FEE.—Beginning on the date of the enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall in accordance with this section assess user fees on, and collect such fees from, each manufacturer and importer of tobacco products subject to this chapter. The fees shall be assessed and collected with respect to each quarter of each fiscal year, and the total amount assessed and collected for a fiscal year shall be the amount specified in subsection (b)(1) for such year, subject to subsection (c).

''(b) ASSESSMENT OF USER FEE.—

''(1) AMOUNT OF ASSESSMENT.—The total amount of user fees authorized to be assessed and collected under subsection (a) for a fiscal year is the following, as applicable to the fiscal year involved:

''(A) For fiscal year 2009, $85,000,000 (subject to subsection (e)).

''(B) For fiscal year 2010, $235,000,000.

''(C) For fiscal year 2011, $450,000,000.

''(D) For fiscal year 2012, $477,000,000.

''(E) For fiscal year 2013, $505,000,000.

''(F) For fiscal year 2014, $534,000,000.

''(G) For fiscal year 2015, $566,000,000.

''(H) For fiscal year 2016, $599,000,000.

''(I) For fiscal year 2017, $635,000,000.

''(J) For fiscal year 2018, $672,000,000.

''(K) For fiscal year 2019 and each subsequent fiscal year, $712,000,000.

''(2) ALLOCATIONS OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

''(A) IN GENERAL.—The total user fees assessed and collected under subsection (a) each fiscal year with respect to each class of tobacco products shall be an amount that is equal to the applicable percentage of each class for the fiscal year multiplied by the amount specified in paragraph (1) for the fiscal year.

''(B) APPLICABLE PERCENTAGE.—

''(i) IN GENERAL.—For purposes of subparagraph (A), the applicable percentage for a fiscal year for each of the following classes of tobacco products shall be determined in accordance with clause (ii):

''(I) Cigarettes.

''(II) Cigars, including small cigars and cigars other than small cigars.

''(III) Snuff.

''(IV) Chewing tobacco.

''(V) Pipe tobacco.

''(VI) Roll-your-own tobacco.

''(ii) ALLOCATIONS.—The applicable percentage of each class of tobacco product described in clause (i) for a fiscal year shall be the percentage determined under section 625(c) of Public Law 108-357 for each such class of product for such fiscal year.

''(iii) REQUIREMENT OF REGULATIONS.—Notwithstanding clause (ii), no user fees shall be assessed on a class of tobacco products unless such class of tobacco products is listed in section 901(b) or is deemed by the Secretary in a regulation under section 901(b) to be subject to this chapter.

''(iv) REALLOCATIONS.—In the case of a class of tobacco products that is not listed in section 901(b) or deemed by the Secretary in a regulation under section 901(b) to be subject to this chapter, the amount of user fees that would otherwise be assessed to such class of tobacco products shall be reallocated to the classes of tobacco products that are subject to this chapter in the same manner and based on the same relative percentages otherwise determined under clause (ii).

''(3) DETERMINATION OF USER FEE BY COMPANY.—

''(A) IN GENERAL.—The total user fee to be paid by each manufacturer or importer of a particular class of tobacco products shall be determined for each quarter by multiplying—

''(i) such manufacturer's or importer's percentage share as determined under paragraph (4); by

''(ii) the portion of the user fee amount for the current quarter to be assessed on all manufacturers and importers of such class of tobacco products as determined under paragraph (2).

''(B) NO FEE IN EXCESS OF PERCENTAGE SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the percentage share of such manufacturer or importer.

''(4) ALLOCATION OF ASSESSMENT WITHIN EACH CLASS OF TOBACCO PRODUCT.—The percentage share of each manufacturer or importer of a particular class of tobacco products of the total user fee to be paid by all manufacturers or importers of that class of tobacco products shall be the percentage determined for purposes of allocations under subsections (e) through (h) of section 625 of Public Law 108–357.

''(5) ALLOCATION FOR CIGARS.—Notwithstanding paragraph (4), if a user fee assessment is imposed on cigars, the percentage share of each manufacturer or importer of cigars shall be based on the excise taxes paid by such manufacturer or importer during the prior fiscal year.

''(6) TIMING OF ASSESSMENT.—The Secretary shall notify each manufacturer and importer of tobacco products subject to this section of the amount of the quarterly assessment imposed on such manufacturer or importer under this subsection for each quarter of each fiscal year. Such notifications shall occur not later than 30 days prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made by the last day of the quarter involved.

''(7) MEMORANDUM OF UNDERSTANDING.—

''(A) IN GENERAL.—The Secretary shall request the appropriate Federal agency to enter into a memorandum of understanding that provides for the regular and timely transfer from the head of such agency to the Secretary of the information described in paragraphs (2)(B)(ii) and (4) and all necessary information regarding all tobacco product manufacturers and importers required to pay user fees. The Secretary shall maintain all disclosure restrictions established by the head of such agency regarding the information provided under the memorandum of understanding.

''(B) ASSURANCES.—Beginning not later than fiscal year 2015, and for each subsequent fiscal year, the Secretary shall ensure that the Food and Drug Administration is able to determine the applicable percentages described in paragraph (2) and the percentage shares described in paragraph (4). The Secretary may carry out this subparagraph by entering into a contract with the head of the Federal agency referred to in subparagraph (A) to continue to provide the necessary information.

''(c) CREDITING AND AVAILABILITY OF FEES.—

''(1) IN GENERAL.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation.

''(2) AVAILABILITY.—

''(A) IN GENERAL.—Fees appropriated under paragraph (3) are available only for the purpose of paying the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this chapter and the Family Smoking Prevention and Tobacco Control Act. No fees collected under subsection (a) may be used for any other costs.

''(B) PROHIBITION AGAINST USE OF OTHER FUNDS.—

''(i) IN GENERAL.—Except as provided in clause (ii), fees collected under subsection (a) are the only funds authorized to be made available for the purpose described in subparagraph (A).

''(ii) STARTUP COSTS.—Clause (i) does not apply until the date on which the Secretary has collected fees under subsection (a) for 2 fiscal year quarters. Until such date, other amounts available to the Food and Drug Administration (excluding fees collected under subsection (a)) are authorized to be made available to pay the costs described in subparagraph (A), provided that such amounts are reimbursed through fees collected under subsection (a).

''(3) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2009 and each subsequent fiscal year, there is authorized to be appropriated for fees under this section an amount equal to the amount specified in subsection (b)(1) for the fiscal year.

''(d) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under subsection (a) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(e) APPLICABILITY TO FISCAL YEAR 2009.—If the date of the enactment of the Family Smoking Prevention and Tobacco Control Act occurs during fiscal year 2009, the following applies, subject to subsection (c):

''(1) The Secretary shall determine the fees that would apply for a single quarter of such fiscal year according to the application of subsection (b) to the amount specified in paragraph (1)(A) of such subsection (referred to in this subsection as the 'quarterly fee amounts').

''(2) For the quarter in which such date of enactment occurs, the amount of fees assessed shall be a pro rata amount, determined according to the number of days remaining in the quarter (including such date of enactment) and according to the daily equivalent of the quarterly fee amounts. Fees assessed under the preceding sentence shall not be collected until the next quarter.

''(3) For the quarter following the quarter to which paragraph (2) applies, the full quarterly fee amounts shall be assessed and collected, in addition to collection of the pro rata fees assessed under paragraph (2).

''(f) STUDY BY GAO.—

''(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on—

''(A) the prevalence of youth tobacco use and the brands and subbrands that individuals under the age of 18 consume;

''(B) the feasibility of structuring the user fees or a portion of the user fees collected under this section on the youth market share of a manufacturer or year to year changes in a manufacturer's share of youth market; and

''(C) the potential effects of tobacco marketing to youth audiences if user fees were calculated in whole or in part on youth market share.

''(2) REPORT.—The Comptroller General shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the study conducted under paragraph (1) by not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act.''.

SEC. 102. FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—On the first day of publication of the Federal Register that is 180 days or more after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register a final rule regarding cigarettes and smokeless tobacco, which—

(A) is deemed to be issued under chapter 9 of the Federal Food, Drug, and Cosmetic Act, as added by section 101 of this Act; and

(B) shall be deemed to be in compliance with all applicable provisions of chapter 5 of title 5, United States Code, and all other provisions of law relating to rulemaking procedures.

(2) CONTENTS OF RULE.—Except as provided in this subsection, the final rule published under paragraph (1), shall be identical in its provisions to part 897 of the regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg., 44615–44618). Such rule shall—

(A) provide for the designation of jurisdictional authority that is in accordance with this subsection in accordance with this Act and the amendments made by this Act;

(B) strike Subpart C—Labels and section 897.32(c);

(C) strike paragraphs (a), (b), and (i) of section 897.3 and insert definitions of the terms ''cigarette'', ''cigarette tobacco,'', and ''smokeless tobacco'' as defined in section 900 of the Federal Food, Drug, and Cosmetic Act;

(D) insert ''or roll-your-own paper'' in section 897.34(a) after ''other than cigarettes or smokeless tobacco'';

(E) become effective on the date that is 1 year after the date of enactment of this Act; and

(F) amend paragraph (d) of section 897.16 to read as follows:

''(d)(1) Except as provided in subparagraph (2), no manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of cigarettes, smokeless tobacco, or other tobacco products (as such term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act).

''(2)(A) Subparagraph (1) does not prohibit a manufacturer, distributor, or retailer from distributing or causing to be distributed free samples of smokeless tobacco in a qualified adult-only facility.

''(B) This subparagraph does not affect the authority of a State or local government to prohibit or otherwise restrict the distribution of free samples of smokeless tobacco.

''(C) For purposes of this paragraph, the term 'qualified adult-only facility' means a facility or restricted area that—

''(i) requires each person present to provide to a law enforcement officer (whether on or off duty) or to a security guard licensed by a governmental entity government-issued identification showing a photograph and at least the minimum age established by applicable law for the purchase of smokeless tobacco;

''(ii) does not sell, serve, or distribute alcohol;

''(iii) is not located adjacent to or immediately across from (in any direction) a space that is used primarily for youth-oriented marketing, promotional, or other activities;

''(iv) is a temporary structure constructed, designated, and operated as a distinct enclosed area for the purpose of distributing free samples of smokeless tobacco in accordance with this subparagraph; and

''(v) is enclosed by a barrier that—

''(I) is constructed of, or covered with, an opaque material (except for entrances and exits);

''(II) extends from no more than 12 inches above the ground or floor (which area at the bottom of the barrier must be covered with material that restricts visibility but may allow airflow) to at least 8 feet above the ground or floor (or to the ceiling); and

''(III) prevents persons outside the qualified adult-only facility from seeing into the qualified adult-only facility, unless they make unreasonable efforts to do so; and

''(vi) does not display on its exterior—

''(I) any tobacco product advertising;

''(II) a brand name other than in conjunction with words for an area or enclosure to identify an adult-only facility; or

''(III) any combination of words that would imply to a reasonable observer that the manufacturer, distributor, or retailer has a sponsorship that would violate section 897.34(c).

''(D) Distribution of samples of smokeless tobacco under this subparagraph permitted to be taken out of the qualified adult-only facility shall be limited to 1 package per adult consumer containing no more than 0.53 ounces (15 grams) of smokeless tobacco. If such package of smokeless tobacco contains individual portions of smokeless tobacco, the individual portions of smokeless tobacco shall not exceed 8 individual portions and the collective weight of such individual portions shall not exceed 0.53 ounces (15 grams). Any manufacturer, distributor, or retailer who distributes or causes to be distributed free samples also shall take reasonable steps to ensure that the above amounts are limited to one such package per adult consumer per day.

''(3) Notwithstanding subparagraph (2), no manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of smokeless tobacco—

''(A) to a sports team or entertainment group; or

''(B) at any football, basketball, baseball, soccer, or hockey event or any other sporting or entertainment event determined by the Secretary to be covered by this subparagraph.

''(4) The Secretary shall implement a program to ensure compliance with this paragraph and submit a report to the Congress on such compliance not later than 18 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

''(5) Nothing in this paragraph shall be construed to authorize any person to distribute or cause to be distributed any sample of a tobacco product to any individual who has not attained the minimum age established by applicable law for the purchase of such product.''.

(3) AMENDMENTS TO RULE.—Prior to making amendments to the rule published under paragraph (1), the Secretary shall promulgate a proposed rule in accordance with chapter 5 of title 5, United States Code.

(4) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), nothing in this section shall be construed to limit the authority of the Secretary to amend, in accordance with chapter 5 of title 5, United States Code, the regulation promulgated pursuant to this section, including the provisions of such regulation relating to distribution of free samples.

(5) ENFORCEMENT OF RETAIL SALE PROVISIONS.—The Secretary of Health and Human Services shall ensure that the provisions of this Act, the amendments made by this Act, and the implementing regulations (including such provisions, amendments, and regulations relating to the retail sale of tobacco products) are enforced with respect to the United States and Indian tribes.

(6) QUALIFIED ADULT-ONLY FACILITY.—A qualified adult-only facility (as such term is defined in section 897.16(d) of the final rule published under paragraph (1)) that is also a retailer and that commits a violation as a retailer shall not be subject to the limitations in section 103(q) and shall be subject to penalties applicable to a qualified adult-only facility.

(7) CONGRESSIONAL REVIEW PROVISIONS.—Section 801 of title 5, United States Code, shall not apply to the final rule published under paragraph (1).

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary of Health and Human Services or the Food and Drug Administration as binding precedent:

(1) The preamble to the proposed rule in the document titled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314–41372 (August 11, 1995)).

(2) The document titled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act'' (60 Fed. Reg. 41453–41787 (August 11, 1995)).

(3) The preamble to the final rule in the document titled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396–44615 (August 28, 1996)).

(4) The document titled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination'' (61 Fed. Reg. 44619–45318 (August 28, 1996)).

SEC. 103. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (a), by inserting ''tobacco product,'' after ''device,'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (c), by inserting ''tobacco product,'' after ''device,'';

(4) in subsection (e)—

(A) by striking the period after ''572(i)''; and

(B) by striking ''or 761 or the refusal to permit access to'' and inserting ''761, 909, or 920 or the refusal to permit access to'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j)—

(A) by striking the period after ''573''; and

(B) by striking ''708, or 721'' and inserting ''708, 721, 904, 905, 906, 907, 908, 909, or 920(b)'';

(8) in subsection (k), by inserting ''tobacco product,'' after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(i)(3).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 903(b), 907, 908, or 916;

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 909, or 920; or

''(C) to comply with a requirement under section 522 or 913.'';

(11) in subsection (q)(2), by striking ''device,'' and inserting ''device or tobacco product,'';

(12) in subsection (r), by inserting ''or tobacco product'' after the term ''device'' each time that such term appears; and

(13) by adding at the end the following:

''(oo) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).

''(pp) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 911.

''(qq)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp (including tax stamp), tag, label, or other identification device upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other item that is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(3) The doing of any act that causes a tobacco product to be a counterfeit tobacco product, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit tobacco product.

''(rr) The charitable distribution of tobacco products.

''(ss) The failure of a manufacturer or distributor to notify the Attorney General and the Secretary of the Treasury of their knowledge of tobacco products used in illicit trade.

''(tt) With respect to a tobacco product, any statement directed to consumers through the media or through the label, labeling, or advertising that would reasonably be expected to result in consumers believing that the product is regulated, inspected or approved by the Food and Drug Administration, or that the product complies with the requirements of the Food and Drug Administration, including a statement or implication in the label, labeling, or advertising of such product, and that could result in consumers believing that the product is endorsed for use by the Food and Drug Administration or in consumers being misled about the harmfulness of the product because of such regulation, inspection, or compliance.''.

(c) SECTION 303.—Section 303(f) (21 U.S.C. 333(f)) is amended—

(1) in paragraph (1)(A), by inserting ''or tobacco products'' after the term ''devices'' each place such term appears;

(2) in paragraph (5)—

(A) in subparagraph (A)—

(i) by striking ''assessed'' the first time it appears and inserting ''assessed, or a no-tobacco-sale order may be imposed,''; and

(ii) by striking ''penalty'' the second time it appears and inserting ''penalty, or upon whom a no-tobacco-sale order is to be imposed,'';

(B) in subparagraph (B)—

(i) by inserting after ''penalty,'' the following: ''or the period to be covered by a no-tobacco-sale order,''; and

(ii) by adding at the end the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.''; and

(C) by adding at the end the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(3) in paragraph (6)—

(A) by inserting ''or the imposition of a no-tobacco-sale order'' after the term ''penalty'' each place such term appears; and

(B) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(4) by adding at the end the following:

''(8) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1). Prior to the entry of a no-sale order under this paragraph, a person shall be entitled to a hearing pursuant to the procedures established through regulations of the Food and Drug Administration for assessing civil money penalties, including at a retailer's request a hearing by telephone, or at the nearest regional or field office of the Food and Drug Administration, or at a Federal, State, or county facility within 100 miles from the location of the retail outlet, if such a facility is available.''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) in subsection (a)(2)—

(A) by striking ''and'' before ''(D)''; and

(B) by striking ''device.'' and inserting the following: ''device, and (E) Any adulterated or misbranded tobacco product.'';

(2) in subsection (d)(1), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (g)(1), by inserting ''or tobacco product'' after the term ''device'' each place such term appears; and

(4) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device''.

(e) SECTION 505.—Section 505(n)(2) (21 U.S.C. 355(n)(2)) is amended by striking ''section 904'' and inserting ''section 1004''.

(f) SECTION 523.—Section 523(b)(2)(D) (21 U.S.C. 360m(b)(2)(D)) is amended by striking ''section 903(g)'' and inserting ''section 1003(g)''.

(g) SECTION 702.—Section 702(a)(1) (U.S.C. 372(a)(1)) is amended—

(1) by striking ''(a)(1)'' and inserting ''(a)(1)(A)''; and

(2) by adding at the end the following:

''(B)(i) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with this paragraph to carry out inspections of retailers within that State in connection with the enforcement of this Act.

''(ii) The Secretary shall not enter into any contract under clause (i) with the government of any of the several States to exercise enforcement authority under this Act on Indian lands without the express written consent of the Indian tribe involved.''.

(h) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after the term ''device,'' each place such term appears; and

(2) by inserting ''tobacco products,'' after the term ''devices,'' each place such term appears.

(i) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)(A), by inserting ''tobacco products,'' after the term ''devices,'' each place such term appears;

(2) in subsection (a)(1)(B), by inserting ''or tobacco products'' after the term ''restricted devices'' each place such term appears;

(3) in subsection (b), by inserting ''tobacco product,'' after ''device,''; and

(4) in subsection (g)(13), by striking ''section 903(g)'' and inserting ''section 1003(g)''.

(j) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(k) SECTION 709.—Section 709 (21 U.S.C. 379a) is amended by inserting ''tobacco product,'' after ''device,''.

(l) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting ''tobacco products,'' after the term ''devices,'' ;

(B) by inserting ''or section 905(h)'' after ''section 510''; and

(C) by striking the term ''drugs or devices'' each time such term appears and inserting ''drugs, devices, or tobacco products'';

(2) in subsection (e)(1), by inserting ''tobacco product,'' after ''device,''; and

(3) by adding at the end the following:

''(p)(1) Not later than 36 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report regarding—

''(A) the nature, extent, and destination of United States tobacco product exports that do not conform to tobacco product standards established pursuant to this Act;

''(B) the public health implications of such exports, including any evidence of a negative public health impact; and

''(C) recommendations or assessments of policy alternatives available to Congress and the executive branch to reduce any negative public health impact caused by such exports.

''(2) The Secretary is authorized to establish appropriate information disclosure requirements to carry out this subsection.''.

(m) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(b)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting '', and tobacco products'' after ''devices''.

(n) SECTION 1009.—Section 1009(b) (as redesignated by section 101(b)) is amended by striking ''section 908'' and inserting ''section 1008''.

(o) SECTION 409 OF THE FEDERAL MEAT INSPECTION ACT.—Section 409(a) of the Federal Meat Inspection Act (21 U.S.C. 679(a)) is amended by striking ''section 902(b)'' and inserting ''section 1002(b)''.

(p) RULE OF CONSTRUCTION.—Nothing in this section is intended or shall be construed to expand, contract, or otherwise modify or amend the existing limitations on State government authority over tribal restricted fee or trust lands.

(q) GUIDANCE AND EFFECTIVE DATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall issue guidance—

(A) defining the term ''repeated violation'', as used in section 303(f)(8) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)(8)) as amended by subsection (c), as including at least 5 violations of particular requirements over a 36-month period at a particular retail outlet that constitute a repeated violation and providing for civil penalties in accordance with paragraph (2);

(B) providing for timely and effective notice by certified or registered mail or personal delivery to the retailer of each alleged violation at a particular retail outlet prior to conducting a followup compliance check, such notice to be sent to the location specified on the retailer's registration or to the retailer's registered agent if the retailer has provider such agent information to the Food and Drug Administration prior to the violation;

(C) providing for a hearing pursuant to the procedures established through regulations of the Food and Drug Administration for assessing civil money penalties, including at a retailer's request a hearing by telephone or at the nearest regional or field office of the Food and Drug Administration, and providing for an expedited procedure for the administrative appeal of an alleged violation;

(D) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(E) establishing that civil money penalties for multiple violations shall increase from one violation to the next violation pursuant to paragraph (2) within the time periods provided for in such paragraph;

(F) providing that good faith reliance on the presentation of a false government-issued photographic identification that contains a date of birth does not constitute a violation of any minimum age requirement for the sale of tobacco products if the retailer has taken effective steps to prevent such violations, including—

(i) adopting and enforcing a written policy against sales to minors;

(ii) informing its employees of all applicable laws;

(iii) establishing disciplinary sanctions for employee noncompliance; and

(iv) requiring its employees to verify age by way of photographic identification or electronic scanning device; and

(G) providing for the Secretary, in determining whether to impose a no-tobacco-sale order and in determining whether to compromise, modify, or terminate such an order, to consider whether the retailer has taken effective steps to prevent violations of the minimum age requirements for the sale of tobacco products, including the steps listed in subparagraph (F).

(2) PENALTIES FOR VIOLATIONS.—

(A) IN GENERAL.—The amount of the civil penalty to be applied for violations of restrictions promulgated under section 906(d), as described in paragraph (1), shall be as follows:

(i) With respect to a retailer with an approved training program, the amount of the civil penalty shall not exceed—

(I) in the case of the first violation, $0.00 together with the issuance of a warning letter to the retailer;

(II) in the case of a second violation within a 12-month period, $250;

(III) in the case of a third violation within a 24-month period, $500;

(IV) in the case of a fourth violation within a 24-month period, $2,000;

(V) in the case of a fifth violation within a 36-month period, $5,000; and

(VI) in the case of a sixth or subsequent violation within a 48-month period, $10,000 as determined by the Secretary on a case-by-case basis.

(ii) With respect to a retailer that does not have an approved training program, the amount of the civil penalty shall not exceed—

(I) in the case of the first violation, $250;

(II) in the case of a second violation within a 12-month period, $500;

(III) in the case of a third violation within a 24-month period, $1,000;

(IV) in the case of a fourth violation within a 24-month period, $2,000;

(V) in the case of a fifth violation within a 36-month period, $5,000; and

(VI) in the case of a sixth or subsequent violation within a 48-month period, $10,000 as determined by the Secretary on a case-by-case basis.

(B) TRAINING PROGRAM.—For purposes of subparagraph (A), the term ''approved training program'' means a training program that complies with standards developed by the Food and Drug Administration for such programs.

(C) CONSIDERATION OF STATE PENALTIES.—The Secretary shall coordinate with the States in enforcing the provisions of this Act and, for purposes of mitigating a civil penalty to be applied for a violation by a retailer of any restriction promulgated under section 906(d), shall consider the amount of any penalties paid by the retailer to a State for the same violation.

(3) GENERAL EFFECTIVE DATE.—The amendments made by paragraphs (2), (3), and (4) of subsection (c) shall take effect upon the issuance of guidance described in paragraph (1) of this subsection.

(4) SPECIAL EFFECTIVE DATE.—The amendment made by subsection (c)(1) shall take effect on the date of enactment of this Act.

(5) PACKAGE LABEL REQUIREMENTS.—The package label requirements of paragraphs (2), (3), and (4) of section 903(a) of the Federal Food, Drug, and Cosmetic Act (as amended by this Act) shall take effect on the date that is 12 months after the date of enactment of this Act. The effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 903(a)(2), (3), and (4) and section 920(a) of the Federal Food, Drug, and Cosmetic Act.

(6) ADVERTISING REQUIREMENTS.—The advertising requirements of section 903(a)(8) of the Federal Food, Drug, and Cosmetic Act (as amended by this Act) shall take effect on the date that is 12 months after the date of enactment of this Act.

SEC. 104. STUDY ON RAISING THE MINIMUM AGE TO PURCHASE TOBACCO PRODUCTS.

The Secretary of Health and Human Services shall—

(1) convene an expert panel to conduct a study on the public health implications of raising the minimum age to purchase tobacco products; and

(2) not later than 5 years after the date of the enactment of this Act, submit a report to the Congress on the results of such study.

SEC. 105. TOBACCO INDUSTRY CONCENTRATION.

(a) STUDY.—The Federal Trade Commission shall conduct a study on the causes and effects of concentration in the tobacco industry.

(b) PUBLIC REPORT.—The Federal Trade Commission shall transmit to Congress a report not later than 5 years after the date of enactment of this Act, and a subsequent report on the date that is 10 years after the date of enactment of this Act. Such reports shall include—

(1) an analysis of trends in the market share of any dominant tobacco product manufacturer in any class of tobacco products; or

(2) an analysis of trends in competition or the emergence of a monopoly; and

(3) recommendations to Congress on any corrective actions that should be taken to address tobacco industry concentration.

SEC. 106. ENFORCEMENT ACTION PLAN FOR ADVERTISING AND PROMOTION RESTRICTIONS.

(a) ACTION PLAN.—

(1) DEVELOPMENT.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall develop and publish an action plan to enforce restrictions adopted pursuant to section 906 of the Federal Food, Drug, and Cosmetic Act, as added by section 101(b) of this Act, or pursuant to section 102(a) of this Act, on promotion and advertising of menthol and other cigarettes to youth.

(2) CONSULTATION.—The action plan required by paragraph (1) shall be developed in consultation with public health organizations and other stakeholders with demonstrated expertise and experience in serving minority communities.

(3) PRIORITY.—The action plan required by paragraph (1) shall include provisions designed to ensure enforcement of the restrictions described in paragraph (1) in minority communities.

(b) STATE AND LOCAL ACTIVITIES.—

(1) INFORMATION ON AUTHORITY.—Not later than 3 months after the date of the enactment of this Act, the Secretary shall inform State, local, and tribal governments of the authority provided to such entities under section 5(c) of the Federal Cigarette Labeling and Advertising Act, as added by section 203 of this Act, or preserved by such entities under section 916 of the Federal Food, Drug, and Cosmetic Act, as added by section 101(b) of this Act.

(2) COMMUNITY ASSISTANCE.—At the request of communities seeking assistance to prevent underage tobacco use, the Secretary shall provide such assistance, including assistance with strategies to address the prevention of underage tobacco use in communities with a disproportionate use of menthol cigarettes by minors.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

''WARNING: Cigarettes are addictive.

''WARNING: Tobacco smoke can harm your children.

''WARNING: Cigarettes cause fatal lung disease.

''WARNING: Cigarettes cause cancer.

''WARNING: Cigarettes cause strokes and heart disease.

''WARNING: Smoking during pregnancy can harm your baby.

''WARNING: Smoking can kill you.

''WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.

''WARNING: Quitting smoking now greatly reduces serious risks to your health.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Each label statement shall comprise at least the top 30 percent of the front and rear panels of the package. The word 'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (c).

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(4) APPLICABILITY TO RETAILERS.—A retailer of cigarettes shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under subsection (c). The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that—

''(A) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

''(4) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(c) MARKETING REQUIREMENTS.—

''(1) RANDOM DISPLAY.—The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(2) ROTATION.—The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(3) REVIEW.—The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

''(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(B) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(4) APPLICABILITY TO RETAILERS.—This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection and subsection (b).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 12 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by subsection (a).

SEC. 202. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

(a) PREEMPTION.—Section 5(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334(a)) is amended by striking ''No'' and inserting ''Except to the extent the Secretary requires additional or different statements on any cigarette package by a regulation, by an order, by a standard, by an authorization to market a product, or by a condition of marketing a product, pursuant to the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), or as required under section 903(a)(2) or section 920(a) of the Federal Food, Drug, and Cosmetic Act, no''.

(b) CHANGE IN REQUIRED STATEMENTS.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 201, is further amended by adding at the end the following:

''(d) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.''.

SEC. 203. STATE REGULATION OF CIGARETTE ADVERTISING AND PROMOTION.

Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended by adding at the end the following:

''(c) EXCEPTION.—Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.''.

SEC. 204. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

''WARNING: This product can cause mouth cancer.

''WARNING: This product can cause gum disease and tooth loss.

''WARNING: This product is not a safe alternative to cigarettes.

''WARNING: Smokeless tobacco is addictive.

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(5) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2)(A) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph.

''(B) For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement.

''(C) The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type.

''(D) The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(E) The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements.

''(F) The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement.

''(G) The label statements shall be in English, except that—

''(i) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(ii) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in

all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraphs (A) and (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection.

''(4) The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 12 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by subsection (a)

SEC. 205. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

(a) IN GENERAL.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 204, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

(b) PREEMPTION.—Section 7(a) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4406(a)) is amended by striking ''No'' and inserting ''Except as provided in the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), no''.

SEC. 206. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by sections 201 and 202, is further amended by adding at the end the following:

''(e) TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE.—

''(1) IN GENERAL.—The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(2) RESOLUTION OF DIFFERENCES.—Any differences between the requirements established by the Secretary under paragraph (1) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(3) CIGARETTE AND OTHER TOBACCO PRODUCT CONSTITUENTS.—In addition to the disclosures required by paragraph (1), the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act.

''(4) RETAILERS.—This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section.''.

TITLE III—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. 301. LABELING, RECORDKEEPING, RECORDS INSPECTION.

Chapter IX of the Federal Food, Drug, and Cosmetic Act, as added by section 101, is further amended by adding at the end the following:

''SEC. 920. LABELING, RECORDKEEPING, RECORDS INSPECTION.

''(a) ORIGIN LABELING.—

''(1) REQUIREMENT.—Beginning 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the label, packaging, and shipping containers of tobacco products for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement 'sale only allowed in the United States'.

''(2) EFFECTIVE DATE.—The effective date specified in paragraph (1) shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with such paragraph.

''(b) REGULATIONS CONCERNING RECORDKEEPING FOR TRACKING AND TRACING.—

''(1) IN GENERAL.—The Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

''(2) INSPECTION.—In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from the point of manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products.

''(3) CODES.—The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking or tracing the tobacco product through the distribution system.

''(4) SIZE OF BUSINESS.—The Secretary shall take into account the size of a business in promulgating regulations under this section.

''(5) RECORDKEEPING BY RETAILERS.—The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

''(c) RECORDS INSPECTION.—If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco products shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, upon the presentation of appropriate credentials and a written notice to such person, to have access to and copy all records (including financial records) relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products. The Secretary shall not authorize an officer or employee of the government of any of the several States to exercise authority under the preceding sentence on Indian lands without the express written consent of the Indian tribe involved.

''(d) KNOWLEDGE OF ILLEGAL TRANSACTION.—

''(1) NOTIFICATION.—If the manufacturer or distributor of a tobacco product has knowledge which reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor that has left the control of such person may be or has been—

''(A) imported, exported, distributed, or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

''(B) imported, exported, distributed, or diverted for possible illicit marketing,

the manufacturer or distributor shall promptly notify the Attorney General and the Secretary of the Treasury of such knowledge.

''(2) KNOWLEDGE DEFINED.—For purposes of this subsection, the term 'knowledge' as applied to a manufacturer or distributor means—

''(A) the actual knowledge that the manufacturer or distributor had; or

''(B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.''.

SEC. 302. STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of cross-border trade in tobacco products to—

(1) collect data on cross-border trade in tobacco products, including illicit trade and trade of counterfeit tobacco products and make recommendations on the monitoring of such trade;

(2) collect data on cross-border advertising (any advertising intended to be broadcast, transmitted, or distributed from the United States to another country) of tobacco products and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, cross-border advertising; and

(3) collect data on the health effects (particularly with respect to individuals under 18 years of age) resulting from cross-border trade in tobacco products, including the health effects resulting from—

(A) the illicit trade of tobacco products and the trade of counterfeit tobacco products; and

(B) the differing tax rates applicable to tobacco products.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the study described in subsection (a).

(c) DEFINITION.—In this section:

(1) The term ''cross-border trade'' means trade across a border of the United States, a State or Territory, or Indian country.

(2) The term ''Indian country'' has the meaning given to that term in section 1151 of title 18, United States Code.

(3) The terms ''State'' and ''Territory'' have the meanings given to those terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

TITLE IV—THRIFT SAVINGS PLAN ENHANCEMENT

SEC. 401. SHORT TITLE.

This title may be cited as the ''Thrift Savings Plan Enhancement Act of 2008''.

SEC. 402. AUTOMATIC ENROLLMENTS.

(a) AUTOMATIC ENROLLMENTS.—

(1) IN GENERAL.—Section 8432(b) of title 5, United States Code, is amended by striking paragraphs (2) through (4) and inserting the following:

''(2)(A) The Board shall by regulation provide for an eligible individual to be automatically enrolled to make contributions under subsection (a) at the default percentage of basic pay.

''(B) For purposes of this paragraph, the default percentage shall be equal to 3 percent or such other percentage, not less than 2 percent nor more than 5 percent, as the Board may by regulation prescribe.

''(C) The regulations shall include provisions under which any individual who would otherwise be automatically enrolled in accordance with subparagraph (A) may—

''(i) modify the percentage or amount to be contributed pursuant to automatic enrollment, effective from the start of such enrollment; or

''(ii) decline automatic enrollment altogether.

''(D) For purposes of this paragraph, the term 'eligible individual' means any individual who, after any regulations under subparagraph (A) first take effect, is appointed, transferred, or reappointed to a position in which that individual is eligible to contribute to the Thrift Savings Fund.

''(E) Sections 8351(a)(1), 8440a(a)(1), 8440b(a)(1), 8440c(a)(1), 8440d(a)(1), and 8440e(a)(1) shall be applied in a manner consistent with the purposes of this paragraph.''.

(2) TECHNICAL AMENDMENT.—Section 8432(b)(1) of title 5, United States Code, is amended by striking the parenthetical matter in subparagraph (B).

(b) DEFAULT INVESTMENTS.—Section 8438(c)(2) of title 5, United States Code, is amended to read as follows:

''(2) If an election has not been made with respect to any sums in the Thrift Savings Fund which are available for investment, the Executive Director shall invest such sums in—

''(A) the Government Securities Investment Fund; or

''(B) such alternative fund or funds (in lieu of the fund under subparagraph (A)) as the Board may designate in regulations.

The designation of an alternative fund by regulations under subparagraph (B) may be made only if, in the judgment of the Board, such designation would be in the best interests of participants. Any decision under the preceding sentence shall be made after consultation with the Employee Thrift Advisory Council (established under section 8473).''.

SEC. 403. QUALIFIED ROTH CONTRIBUTION PROGRAM.

(a) IN GENERAL.—Subchapter III of chapter 84 of title 5, United States Code, is amended by inserting after section 8432c the following:

''§ 8432d. Qualified Roth contribution program

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'qualified Roth contribution program' means a program described in paragraph (1) of section 402A(b) of the Internal Revenue Code of 1986 which meets the requirements of paragraph (2) of such section; and

''(2) the terms 'designated Roth contribution' and 'elective deferral' have the meanings given such terms in section 402A of the Internal Revenue Code of 1986.

''(b) AUTHORITY TO ESTABLISH.—The Board shall by regulation provide for the inclusion in the Thrift Savings Plan of a qualified Roth contribution program, under such terms and conditions as the Board may prescribe.

''(c) REQUIRED PROVISIONS.—The regulations under subsection (b) shall include—

''(1) provisions under which an election to make designated Roth contributions may be made—

''(A) by any individual who is eligible to make contributions under section 8351, 8432(a), 8440a, 8440b, 8440c, 8440d, or 8440e; and

''(B) by any individual, not described in subparagraph (A), who is otherwise eligible to make elective deferrals under the Thrift Savings Plan;

''(2) any provisions which may, as a result of the enactment of this section, be necessary in order to clarify the meaning of any reference to an 'account' made in section 8432(f), 8433, 8434(d), 8435, 8437, or any other provision of law; and

''(3) any other provisions which may be necessary to carry out this section.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 84 of title 5, United States Code, is amended by inserting after the item relating to section 8432c the following:

''8432d. Qualified Roth contribution program.''.

SEC. 404. AUTHORITY TO ESTABLISH SELF-DIRECTED INVESTMENT WINDOW.

(a) IN GENERAL.—Section 8438(b)(1) of title 5, United States Code, is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) in subparagraph (E), by striking the period and inserting ''; and''; and

(3) by adding after subparagraph (E) the following:

''(F) a self-directed investment window, if the Board authorizes such window under paragraph (5).''.

(b) REQUIREMENTS.—Section 8438(b) of title 5, United States Code, is amended by adding at the end the following:

''(5)(A) The Board may authorize the addition of a self-directed investment window under the Thrift Savings Plan if the Board determines that such addition would be in the best interests of participants.

''(B) The self-directed investment window shall be limited to—

''(i) low-cost, passively-managed index funds that offer diversification benefits; and

''(ii) other investment options, if the Board determines the options to be appropriate retirement investment vehicles for participants.

''(C) The Board shall ensure that any administrative expenses related to use of the self-directed investment window are borne solely by the participants who use such window.

''(D) The Board may establish such other terms and conditions for the self-directed investment window as the Board considers appropriate to protect the interests of participants, including requirements relating to risk disclosure.

''(E) The Board shall consult with the Employee Thrift Advisory Council (established under section 8473) before establishing any self-directed investment window.''.

SEC. 405. REPORTING REQUIREMENTS.

(a) ANNUAL REPORT.—The Board shall, not later than June 30 of each year, submit to Congress an annual report on the operations of the Thrift Savings Plan. Such report shall include, for the prior calendar year, information on the number of participants as of the last day of such prior calendar year, the median balance in participants' accounts as of such last day, demographic information on participants, the percentage allocation of amounts among investment funds or options, the status of the development and implementation of the self-directed investment window, the diversity demographics of any company, investment adviser, or other entity retained to invest and manage the assets of the Thrift Savings Fund, and such other information as the Board considers appropriate. A copy of each annual report under this subsection shall be made available to the public through an Internet website.

(b) REPORTING OF FEES AND OTHER INFORMATION.—

(1) IN GENERAL.—The Board shall include in the periodic statements provided to participants under section 8439(c) the amount of the investment management fees, administrative expenses, and any other fees or expenses paid with respect to each investment fund and option under the Thrift Savings Plan. Any such statement shall also provide a statement notifying participants as to how they may access the annual report described in subsection (a), as well as any other information concerning the Thrift Savings Plan that might be useful.

(2) USE OF ESTIMATES.—For purposes of providing the information required under this subsection, the Executive Director may provide a reasonable and representative estimate of any fees or expenses described in paragraph (1) and shall indicate any such estimate as being such an estimate. Any such

estimate shall be based on the previous year's experience.

(c) DEFINITIONS.—For purposes of this section—

(1) the term ''Board'' has the meaning given such term by 8401(5) of title 5, United States Code;

(2) the term ''participant'' has the meaning given such term by section 8471(3) of title 5, United States Code; and

(3) the term ''account'' means an account established under section 8439 of title 5, United States Code.

SEC. 406. ACKNOWLEDGEMENT OF RISK.

(a) IN GENERAL.—Section 8439(d) of title 5, United States Code, is amended—

(1) by striking the matter after ''who elects to invest in'' and before ''shall sign an acknowledgement'' and inserting ''any investment fund or option under this chapter, other than the Government Securities Investment Fund,''; and

(2) by striking ''either such Fund'' and inserting ''any such fund or option''.

(b) COORDINATION WITH PROVISIONS RELATING TO INVESTMENTS IN THE ABSENCE OF AN ELECTION.—Subsection (d) of section 8439 of title 5, United States Code (as amended by subsection (a)) is further amended—

(1) by redesignating subsection (d) as subsection (d)(1); and

(2) by adding at the end the following:

''(2)(A) In the case of an investment made under section 8438(c)(2) in any fund or option to which paragraph (1) would otherwise apply, the participant involved shall, for purposes of this subsection, be deemed—

''(i) to have elected to invest in such fund or option; and

''(ii) to have executed the acknowledgement required under paragraph (1).

''(B)(i) The Executive Director shall prescribe regulations under which written notice shall be provided to a participant whenever an investment is made under section 8438(c)(2)(B) on behalf of such participant in the absence of an affirmative election described in section 8438(c)(1).

''(ii) The regulations shall ensure that any such notice shall be provided to the participant within 7 calendar days after the effective date of the default election.

''(C) For purposes of this paragraph, the term 'participant' has the meaning given such term by section 8471(3).''.

(c) COORDINATION WITH PROVISIONS RELATING TO FIDUCIARY RESPONSIBILITIES, LIABILITIES, AND PENALTIES.—Section 8477(e)(1)(C) of title 5, United States Code, is amended—

(1) by redesignating subparagraph (C) as subparagraph (C)(i); and

(2) by adding at the end the following:

''(ii) A fiduciary shall not be liable under subparagraph (A), and no civil action may be brought against a fiduciary—

''(I) for providing for the automatic enrollment of a participant in accordance with section 8432(b)(2)(A);

''(II) for enrolling a participant in a default investment fund in accordance with section 8438(c)(2)(B); or

''(III) for allowing a participant to invest through the self-directed investment window or for establishing restrictions applicable to participants' ability to invest through the self-directed investment window.''.

SEC. 407. CREDIT FOR UNUSED SICK LEAVE.

(a) IN GENERAL.—Section 8415 of title 5, United States Code, is amended—

(1) by redesignating the second subsection (k) and subsection (l) as subsections (l) and (m), respectively; and

(2) in subsection (l) (as so redesignated by paragraph (1))—

(A) by striking ''(l) In computing'' and inserting ''(l)(1) In computing''; and

(B) by adding at the end the following:

''(2) Except as provided in paragraph (1), in computing an annuity under this subchapter, the total service of an employee who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes—

''(A) for an employee who retires within 3 years after the date of enactment of this paragraph, ¾ of the days, and

''(B) for an employee who retires after 3 years after the date of enactment of this paragraph, the days

of unused sick leave to his credit under a formal leave system, except that these days will not be counted in determining average pay or annuity eligibility under this subchapter. For purposes of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 under section 6301(2)(x)-(xiii), the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.''.

(b) EXCEPTION FROM DEPOSIT REQUIREMENT.—Section 8422(d)(2) of title 5, United States Code, is amended by striking ''section 8415(k)'' and inserting ''paragraph (1) or (2) of section 8415(l)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to annuities computed based on separations occurring on or after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. DINGELL) and the gentleman from Texas (Mr. BARTON) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

GENERAL LEAVE

Mr. DINGELL. Madam Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and to insert extraneous materials on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DINGELL. Madam Speaker, I want to place the legislation we are about to consider in its proper historical context.

Fifty-one years ago, the Surgeon General first stated that tobacco smoking was linked to cancer.

Forty-three years ago, in 1965, tobacco products were for the first time required to carry labels warning of the health hazards to consumers who used them.

Fourteen years ago, the chief executives of the tobacco companies were summoned to appear before the Committee on Energy and Commerce to answer questions about their knowledge of the dangers to human health caused by tobacco and their reluctance or refusal to disclose what they knew.

Ten years ago, the tobacco companies entered into a master settlement with the attorneys general of the States, under which they would pay out billions of dollars to address the costs of smoking, amongst other purposes.

Today, the House will consider H.R. 1108, the Family Smoking Prevention and Tobacco Control Act. This landmark legislation will, for the first time, grant the Food and Drug Administration the authority to regulate tobacco products and to protect consumers on this particular, difficult matter.

It is hard to believe that 51 years after we first became aware of the harmful effects of smoking—and three years after a United Nations tobacco control treaty was enacted—the U.S. government has been unable to take the steps necessary to stem the tide of smoking. With this legislation, we can change that.

Cigarette smoking accounts for about one in five deaths annually, or about 435,000 deaths each year. Each day, more than 4,000 young Americans try a cigarette for the first time, and each day 1,000 of these become addicted to tobacco. One in every three of these smokers will die prematurely.

With this legislation, we will place sharp and sorely needed limits on access to tobacco products and on tobacco advertising and marketing.

Public health organizations have fought for this legislation for 20 years, and I want to commend in particular the Campaign for Tobacco-Free Kids, the American Lung Association, the American Heart Association, the American Cancer Society, and other of our colleagues in particular, Representatives WAXMAN, DAVIS and PALLONE, who deserve great credit for their diligence and persistence in bringing this legislation to the point where it is.

Passage of H.R. 1108 will stand as an historic achievement. I urge my colleagues in the strongest terms to vote for the health of America's children and to vote for the health of the American people.

I reserve the balance of my time.

Mr. BARTON of Texas. Madam Speaker, I yield myself such time as I may consume.

(Mr. BARTON of Texas asked and was given permission to revise and extend his remarks.)

Mr. BARTON of Texas. Madam Speaker, on the next bill, the Consumer Product Safety Commission reauthorization bill, I will be standing in this very spot saying extremely complimentary things about Chairman DINGELL, the process that he has used and that Speaker PELOSI has used to bring the Consumer Product Safety Commission reauthorization bill to the floor of the House of Representatives. But that's the next bill.

On this bill, I must say I still have the greatest personal respect for our distinguished chairman, Mr. DINGELL, and our subcommittee chairman, Mr. PALLONE, but I cannot say anything kind about the product of the legislation that they're bringing to the body today.

At the beginning of this Congress, Madam Speaker, our Speaker for the entire full House of Representatives, Speaker NANCY PELOSI said, ''Bills should generally come to floor under a

procedure that allows open, full and fair debate consisting of a full amendment process that grants the Minority the right to offer its alternatives.''

That's not the case with this bill, Madam Speaker. The final product that's before us was given to the minority at about 1:05 this afternoon, which is approximately 3 hours and 5 minutes ago. We did have a committee markup. We did have some process. We did have some hearings in Mr. PALLONE's subcommittee. We did have a legislative hearing on the bill, but once that was concluded, the bill disappeared into a sinkhole, only to reemerge today as a suspension bill.

As you know, Madam Speaker, suspensions are theoretically about noncontroversial items in which there is little controversy and no disagreement between Members of the body on either side of the aisle. It's not the case on this bill, Madam Speaker.

This bill will cost jobs in the agricultural sector. This bill has been so controversial that we, as I said earlier, didn't even get a work product until early this afternoon.

On the substance of the bill, I disagree with the central premise, that the Food and Drug Administration should have the authority under this bill that actually certifies that tobacco is a responsible product. Isn't that an ironic thing? This bill is, in my opinion, a marketing allocation bill more than it is a regulation bill.

The FDA does not have the resources to do this new responsibility. The FDA is not the tobacco police. The FDA should not be responsible for going into every convenience store and grocery store and tobacco shop in America making sure that the tobacco products are sold exactly as required.

I could go on and on. I could quote Chairman DINGELL and Subcommittee Chairman PALLONE and Chairman WAXMAN of the Government Reform Committee where in a letter they said back in January about how short the FDA was of resources. I'm not going to do that. I might put it in the RECORD, but I won't quote them at this time.

The FDA has only increased its total number of employees in the last decade by 646. Its appropriations in adjusted dollars is about $300 million less than the inflation-adjusted dollars that the FDA says it needs. Yet we're going to give the FDA another huge responsibility and not give them the resources to do the work that the bill says they should do.

If we really need to do more to restrict advertising for tobacco products or to prevent marketing to children, we can do that by going to other agencies that have that responsibility in the marketplace right now. If there should be more enforcement to prevent children from buying cigarettes because they're under age, we should bring a bill to the floor that would strengthen the Synar amendment, a former congressman from Oklahoma and a former member of the Energy and Commerce Committee.

We could certainly encourage States to actually use their master settlement agreement funds to do things like the smoking cessation programs. It's ironic to me that less than 30 percent of the funds that have been given to the States under the master settlement agreement are being used for anti-smoking campaigns. That would be one area where I think both sides of the aisle, Republicans and the Democrats, could have bipartisan agreement.

In short, Madam Speaker, what we don't need is creating at the FDA a new, Draconian bureaucracy since they're already overburdened and have more work than they know what to do with.

I do agree that cigarettes are bad for people's health. I have never smoked a cigarette. I don't allow smoking in my office. I don't take any kind of campaign funds from tobacco companies. So I do practice what I preach, Madam Speaker, but I do not believe that this bill addresses the underlying problem in a satisfactory way.

And for that purpose, I will strongly urge a ''no'' vote—again, since this is a suspension bill which on process alone, it shouldn't be but it is—it only takes one-third vote to defeat the bill.

□ 1615

That would be the perfect solution to this bill, would be to send it to the boneyard of other suspension bills that shouldn't be on the suspension calendar in the first place.

Madam Speaker, it is getting a little tiresome to keep saying here we go again, but here we go again.

Once again we come to the House floor to consider a major piece of legislation under suspension of the rules. Traditionally, we suspend the normal rules for things like naming post offices and other noncontroversial bills. For those watching on C–SPAN, suspension of the rules means limited debate and no amendments. We all remember that Speaker PELOSI told us that—and I'm quoting here—"bills should generally come to the floor under a procedure that allows open, full and fair debate consisting of a full amendment process that grants the minority the right to offer its alternatives." The reality has been different. Promise made, promise unmade.

Madam Speaker, this bill is hardly ordinary. Honestly noncontroversial bills do not require committee mark-ups that stretch over multiple days. Noncontroversial bills do not contain billion-dollar tax hikes. Noncontroversial bills do not cause working people to lose their jobs or their farms. In fact, the provisions of the bill were so controversial that the majority could not even produce a bill to be seen in public until this morning because they couldn't agree among themselves about what should be in it. Madam Speaker, handling legislation of this importance in this way is not the open and transparent process that was promised. It is the opposite.

Now, on the substance of the bill, I disagree with the central premise of the bill that the Food and Drug Administration should be given this responsibility. The FDA is tasked with protecting the safety of the food we eat, and ensuring the drugs we take, and the medical devices we use are safe and effective. It is an agency that we have held numerous hearings on and have come to a bipartisan conclusion that the agency lacks sufficient resources to do its current mission. Congress affirmed that conclusion when we appropriated an additional $150 million in the Emergency Supplemental Appropriations for the FDA. Speaker, the FDA is still the wrong agency, at the wrong time, to become the tobacco police. They need to focus on their current mission.

Here's what Chairman DINGELL, Chairman PALLONE and Chairman WAXMAN said about the current problem in a January 23, 2008 letter to FDA:

> Experts from every affected sector agree that this desperate funding situation has rendered FDA unable to protect the American public from even the most basic threats, including contaminated food, tainted and dangerous drugs, and faulty medical devices. According to FDA's own Science Board . . . American lives are now at risk.

FDA has plenty to do just to save those lives that are at risk. We, the Congress, have passed 125 laws over the last 20 years that directly impact FDA's regulatory responsibilities, yet our appropriated resources to the agency have not kept pace. During the same time period, FDA has only increased its total number of employees by 646 people; and its appropriations are about $300 million less now in inflation-adjusted dollars. We're pretty good at telling FDA what to do and how to do it, but not so good at paying for what we order. And here we go again. Instead of making it possible for FDA to do the jobs we've already given it, we are here today adding new regulatory responsibilities that dwarf any of those given to the FDA in the past two decades.

If we need to do more to restrict advertising or prevent marketing to children, we can find the right agency to do that. If there should be more enforcement to prevent children from buying cigarettes, we can strengthen the Synar amendment. The best way to reduce smoking is for States to use more of their Master Settlement Agreement funds on things like smoking cessation products. So let's talk about encouraging States to use more of their MSA funds for this purpose.

These are problems we can solve without creating a new, draconian bureaucracy at an already over-burdened agency that Members on both sides of the aisle agree needs to do a much better job at conducting its current mission.

Cigarettes are bad for people's health, period. Madam Speaker, if people believe there should be an increased Federal role in tobacco regulation, we can do better than this deceptive process and we can do better than this bill. I urge my colleagues to vote "no" and send a message that promises are meant to be kept.

With that, Madam Speaker, I reserve the balance of my time.

Mr. DINGELL. Madam Speaker, I yield to my dear and valued friend from West Virginia, the chairman of the Natural Resources Committee, 1 minute for the purposes of a colloquy.

Mr. RAHALL. Mr. Chairman, thank you very much for yielding. I want to thank you for the very accommodating and congenial manner in which you have accommodated the interests and the jurisdiction of the House of Natural Resources Committee on this issue.

I would like to ask the distinguished chairman, the gentleman from Michigan, a question about the provision of the bill that requires the FDA, to the extent feasible, to enter into contracts with States for the inspection of tobacco retailers within their borders. It is my understanding that this contracting provision applies to Indian tribes in the same way as the provision applies to States.

I would yield to the distinguished chairman to clarify.

Mr. DINGELL. My good friend from West Virginia is correct. The FDA is required in the legislation, to the extent feasible, to enter into contracts with Indian tribes for the inspection of tobacco retailers located on Indian lands.

Mr. RAHALL. I thank the distinguished chairman.

Mr. DINGELL. I thank my good friend.

Mr. BARTON of Texas. Madam Speaker, I want to yield 1 minute to our distinguished minority leader from the Buckeye State of Ohio (Mr. BOEHNER).

Mr. BOEHNER. Let me thank my colleague for yielding and say to my colleagues that we don't have time to have a vote this week on our All-American Energy Plan that would actually bring down gas prices in America, but we've got time to regulate tobacco.

Now this bill has been hanging around here for 15 years. For 15 years, we've been trying to move this piece of legislation. We're going to charge the tobacco companies about $5 billion over the next few years to pay for a bureaucracy here in Washington so we can regulate tobacco.

Now, listen. Most of my colleagues know that I smoke. I know that smoking is probably not good for my health. Most people who smoke in America know that smoking is probably not good for their health. Do we need the Federal Government to tell us? Do we need to spend $5 billion of smokers' money for the government to tell us that smoking is not good for us? I don't think so. This bill has not been through the legislative process as everything was promised that it should be. Frankly, the whole idea that the Federal Government ought to regulate more and more and more of our lives just gets under my skin.

I have great respect for my colleague from Michigan. He is a great Member of Congress, and we've worked together on a lot of issues, but this is a boneheaded idea. I mean, how much is enough? How much government do we need? More and more and more. There is not a smoker in America who doesn't understand that smoking isn't good for you, but now we're going to have the Federal Government, a big agency, set up under this bill where the FDA is going to be required to have this whole bureaucracy. It will have all of these new buildings. It will hire all of these people to issue all of these regulations that the tobacco companies are going to have to comply with and that smokers will pay for so that we can, out of all of this, understand that smoking is not good for you.

We've already got labels on cigarettes. You've got some companies that might as well put a billboard on a pack of cigarettes so that you know that it's bad for you. I can imagine what will happen after we get more government regulations on this issue. I would just ask my colleagues: How much is enough? How much regulation and how much government and how much bureaucracy do we need before we finally say, Enough is enough? Let's stop. Let's vote against this bill.

Mr. DINGELL. Madam Speaker, I yield myself 15 seconds for the purpose of responding to my beloved friend, the minority leader.

This legislation is on the floor because people are killing themselves by smoking these evil cigarettes. The distinguished gentleman, the minority leader, is going to be amongst the next to die. I am trying to save him, as the rest of us are, because he is committing suicide every time he puffs on one of those things.

Mr. BOEHNER. Would the gentleman be kind enough to yield?

Mr. DINGELL. I didn't yield to the gentleman.

The SPEAKER pro tempore. The time of the gentleman from Michigan has expired.

Mr. DINGELL. At this time, Madam Speaker, I yield 2 minutes to my good friend from New Jersey (Mr. PALLONE).

Mr. PALLONE. Madam Speaker, I couldn't agree more with what Mr. DINGELL said, but I do also want to point out to the minority leader that this is about kids.

In fact, many adults smoke, and I'm sure they're very much aware of what they're doing. I suppose you could argue that, if people want to kill themselves and they're adults, then let them do so, but every day, approximately 4,000 kids, children, try a cigarette for the first time, of which 1,140 become new daily smokers.

According to my calculations, this means that since 1996 almost 5 million children have become tobacco addicts and that one-third of those kids will end up dying prematurely from tobacco-related illnesses.

So I say to the minority leader: Forget about the adults for the time being. We've got to stop the kids who are not aware and who don't understand the dangers of tobacco. They shouldn't start smoking. I think that's really what this is all about. This is a very important day, and I do resent the fact that the minority leader is belittling it by saying this is a boneheaded idea.

I want to thank Mr. WAXMAN. He has been at this for I don't know how many years—12, 15, 20 years.

Twelve years after the FDA first published a comprehensive rule that would protect children from the harmful effects of tobacco, we are finally one step closer to actually implementing its provisions and protecting millions of Americans, and particularly the children, from a lifetime of addiction and of poor health.

Madam Speaker, it's hard to believe that tobacco products are exempt from the basic health and safety regulations that apply to other consumer products, but in fact, they are. Presently, the FDA is prohibited from regulating tobacco products, one of the most dangerous products available to consumers, and that's why we have to act today. Imagine that the FDA regulates toothpaste but not cigarettes. They monitor cereal but not chewing tobacco. Ironically, the FDA regulates both over-the-counter and prescription medications to help people quit smoking; yet it has no authority over the cause of the addiction. By passing this bill today, we're one step closer to changing all of that.

In closing, I just want to say that this is a very important bill, and I urge its passage.

The SPEAKER pro tempore. Without objection, the gentleman from New Jersey (Mr. PALLONE) will control the balance of the majority's time.

There was no objection.

Mr. BARTON of Texas. I would yield to the gentleman from Indiana (Mr. BUYER), a member of the committee, for a unanimous consent request.

(Mr. BUYER asked and was given permission to revise and extend his remarks.)

Mr. BUYER. Madam Speaker, I rise in opposition to this bill.

As we discuss H.R. 1108, the Family Smoking Prevention and Tobacco Control Act, the question before the House is not whether we want to decrease youth smoking as the bill is purported to do. The question is, after years of headlines and alarming stories about the FDA's failure to protect our Nation's food and drug supplies, do we in Congress believe that the FDA is in a place to take on a multi-billion dollar tobacco industry?

I believe that each one of us agrees that the FDA is under-funded and cannot perform its current functions. Over the past 2 years, this Congress has spent enormous amounts of time negotiating legislation to reauthorize programs such as the Prescription Drug User Fee Act and the Medical Device User Fee Act. Not only did we reauthorize the programs as they existed, but we added to these programs and increased the FDA's workload.

In the past several months, there have been numerous hearings in the Energy and Commerce Committee to try to determine what needs to be fixed at the FDA so that we can assure the American people that their food, their drugs, and their medical devices are safe.

Unfortunately, we all understand the realities that exist within the FDA. Foreign drug manufacturing facilities are mostly going uninspected by the FDA, and the inspections that take place are not effective. FDA's surveillance over the drugs on our market today is not where it should be. Bad actors are getting into our drug supply chain and diverting good drugs out of the supply chain and bad drugs into the chain. Hundreds of thousands of unregulated and potentially harmful drugs

are streaming into our country's international mail facilities every day and being sent to American homes with no FDA inspection or testing whatsoever. And, these problems only cover the problems with FDA's oversight over our Nation's prescription drug supply. We could go on about the problems that exist with our Nation's food supply.

It is important that we look back at our discussions over the past year in this Congress and the discussions that we have before us over the FDA's lack of resources and ability to fulfill the duties that we have vested in the Agency.

Every morning when I pick up the paper there is a new article about the dangers facing our country due to an underfunded and ill-equipped FDA. A few recent headlines have read:

''FDA inspections lag in overseas drug factories.''—Washington Times (2/28/08)

''FDA Chief is in a Budget Bind.''—WSJ (2/27/08)

''FDA Needs $375 million more to address shortcomings.''—Congress Daily (2/27/08)

In fact, just this morning in an article in the Wall Street Journal, the Chairman of the Energy and Commerce Committee is quoted as saying, ''There's a total inability of the FDA to carry out its mission.''

Many of my colleagues on the Energy and Commerce Committee have been vocal about the FDA's ineffectiveness in recent congressional testimonies.

The FDA is ''a sorry mess.''—Chairman DINGELL (7/17/07)

''The warning signs are clear: FDA is an agency in crisis.''—HENRY WAXMAN (author of the tobacco bill) (5/5/07)

''Unfortunately, as this Committee under both Republican and Democrat leadership has documented, FDA's resources have become woefully inadequate given the agency's expansive mission. Accordingly, the agency's ability to protect American families from unsafe foods, drugs, medical devices, and other products has radically deteriorated.''—BART STUPAK (1/29/08)

Despite these strong statements, these very members want to put a multi-billion dollar industry under an Agency that is not adequately performing its current functions.

The FDA itself has expressed its concerns about being mandated to regulate tobacco. The current FDA Commissioner, Andrew von Eschenbach, outlined his concerns in a recent letter to Members of Congress. Commissioner von Eschenbach wrote, ''Enactment of H.R. 1108 would redirect Agency priorities and resources to a new regulatory area, which is not only inconsistent with FDA's mission, but also diverts attention from the significant public health matters of the safety of food, drugs, biologics and medical devices.''

And, if I remember correctly, none of the last few FDA Commissioners has supported FDA regulating tobacco.

Madam Speaker, I ask that we all think long and hard about that one big question before us today. Is the FDA ready to take on this multi-billion dollar industry in the midst of the challenges already before the Agency today?

I agree that we need to keep tobacco out of the hands of our youth. I agree with the statistics that show that people become addicted to tobacco while they are in their youth. I am concerned about the growing prevalence of disease and death attributable to tobacco in our country.

However, I believe that we have means to increase enforcement in our States to keep tobacco out of our children's hands. We do not need a new government bureaucracy which will inevitably be underfunded and ill-equipped to effectively regulate the tobacco market.

Mr. BARTON of Texas. I now want to yield to the distinguished tri-captain of the victorious congressional Republican baseball team, the gentleman from Virginia (Mr. DAVIS), 1 minute.

Mr. DAVIS of Virginia. Could I have 1 minute from the other side as well?

Mr. PALLONE. Madam Speaker, I yield 1 minute to the gentleman from Virginia.

The SPEAKER pro tempore. The gentleman from Virginia is recognized for 2 minutes.

(Mr. DAVIS of Virginia asked and was given permission to revise and extend his remarks.)

Mr. DAVIS of Virginia. Four hundred thousand Americans die every year from tobacco-related diseases. That's why we're here today.

For the past 8 years, I've sought to pass legislation like this, giving the FDA authority to regulate tobacco. For the past 6, my good friend and esteemed colleague HENRY WAXMAN and I have partnered on legislation to this end. Today's hopeful passage of H.R. 1108 marks a milestone in our efforts, and I'm honored and proud to be here with him and with the distinguished chairman of the committee to take this vital step in protecting the public health.

In my view, the primary focus of our tobacco control policy should be to stem the flow of new tobacco users. Regrettably, this equates to keeping children away from tobacco since most of the new users are under the age of 18. Among this group, tobacco use has become synonymous with a rugged independence, of a refutation of authority and of an arrogant disregard for one's personal well-being—the traits that many teenagers desire.

How did this most self-destructive behavior, short of actual suicide, take hold in the collective psyche of our young people?

In large part, the marketing tactics by tobacco manufacturers fanned the flames of youthful angst. The entertainment industry added further fuel with innumerable cigarette-smoking heroes on movie screens and on television. If only the Marlboro Man had been holding a slide rule instead of a cigarette.

H.R. 1108 gives the FDA appropriate tools to restrict marketing and access so that children will have less interest in tobacco and less ability to purchase it. Tobacco can be more addictive than heroin, so it is important that the tobacco policy espoused in this legislation also addresses the needs of current users. It calls on the Secretary to closely examine innovative products that would help users end their dependence. I'm hopeful the result will be the expedited approval of cessation products and of a more vibrant market for them. H.R. 1108 also allows for the development of modified risk products.

I urge the adoption of this legislation.

Mr. PALLONE. Madam Speaker, I yield 3 minutes to the sponsor of the legislation, who has worked tirelessly on this for so many years, Mr. WAXMAN.

Mr. WAXMAN. I thank the gentleman for yielding to me.

Madam Speaker, this is truly an historic day in the fight against tobacco, but it took us far too long to get here.

In 1994, the tobacco executives stood before my subcommittee, held their hands up, swore to tell the truth, and then immediately lied under oath and said, ''Nicotine, it's not addictive. Children, we don't try to market to children.'' Of course, the opposite was true.

In 1996, the FDA tried to regulate tobacco products, but the Supreme Court told them they needed specific congressional language to give them that authority. Now, 12 years later, here we are, finally giving the FDA that authority to regulate the leading preventable cause of death in America.

Every one of us knows the tragic consequences of cigarette smoking. We've seen loved ones die, suffer. We've watched others grow sick. Many of us have felt the grip firsthand of addiction, but the worst of all is what happens to children. One thousand children start smoking each and every day. Four hundred thousand Americans die every year.

The minority leader said: When is enough enough?

Well, cigarettes, one of the most dangerous products on sale today, is not regulated at all. This bill would give the FDA, the only agency with the right combination of scientific expertise, with regulatory experience and with a public health mission, the ability to oversee the products effectively.

The FDA can stop that marketing to kids. They can prevent manufacturers from misrepresenting their products as ''light'' or as ''safer.'' They can require changes in cigarettes. They can change the level of nicotine so that people who smoke and who want to give up smoking will have a fighting chance. They can regulate ingredients such as formaldehyde or benzene or radioactive elements or any other deadly chemical.

Now, some have argued that the FDA is overburdened, that they can't do another job. Well, they are overburdened, and they're not well funded, but this bill has a user fee built into it to raise the money from the tobacco companies to give the FDA the ability to go and regulate this product.

The breadth of support for this bill is from the AARP to the American Academy of Pediatrics and from the Southern Baptist Convention to the Islamic Society of North America. It is supported by the American Lung Association, by the American Heart Association and by the American Cancer Society—the groups that are best situated to understand the damage caused by

tobacco. We've tried to accommodate specific concerns we've heard about this bill to provide fairness and flexibility for convenient stores and for others.

Join in support of this legislation. It is a bipartisan bill, and I urge its adoption.

Mr. BARTON of Texas. Madam Speaker, can I inquire as to the time on each side that is remaining, please.

The SPEAKER pro tempore. The gentleman from Texas controls 12 minutes, and the gentleman from New Jersey controls 9½ minutes.

Mr. BARTON of Texas. Madam Speaker, I wish to yield 2 minutes to the distinguished gentleman from North Carolina (Mr. COBLE).

Mr. COBLE. I thank the gentleman from Texas.

Madam Speaker, during my tenure in Congress, I have consistently opposed granting the Food and Drug Administration the authority to regulate tobacco. As I have stated on many occasions, I believe allowing the FDA to regulate tobacco in any capacity would inevitably lead to the FDA's regulating the family farm.

□ 1630

Let's be candid, Madam Speaker; should the FDA spend its time regulating tobacco on the farm and in manufacturing facilities, despite warnings on cigarette labels which alert consumers to their danger, or should it focus on the core mission of ensuring the safety and soundness of our food, drugs and cosmetics?

I also have concerns with the impact this legislation would have upon tobacco manufacturers and their employees. These companies employ many hardworking, diligent working North Carolinians, and I believe the FDA regulation of tobacco would negatively affect these manufacturing jobs.

Finally, Madam Speaker, taxing tobacco companies to fund additional regulation and avoid PAYGO problems is ill-conceived and will create an incentive, in my opinion, for black market activity such as counterfeiting and smuggling.

Madam Speaker, this legislation is misguided and, in my opinion, will not achieve the goals identified by proponents. Indeed, I believe it will further exacerbate an already stretched FDA, negatively impact manufacturers and farmers, and create a strain on Federal revenues to the Treasury. I adamantly oppose the measure and urge my colleagues to do the same.

Madam Speaker, tobacco is a product that is lawfully grown, lawfully marketed, lawfully manufactured and lawfully consumed. We don't need the FDA inserting its oars into these waters.

Mr. PALLONE. Madam Speaker, I would like to recognize the gentlewoman from the Virgin Islands, but I do have to remark that it is wonderful to see our colleague, BOBBY RUSH from Illinois, back here today. Thank you for being with us today.

I yield 1 minute to the gentlewoman from the Virgin Islands.

Mrs. CHRISTENSEN. Madam Speaker, first I want to thank Chairman DINGELL, Chairman PALLONE and Chairman WAXMAN for your leadership and for working with us on the CBC to address some of our concerns about the bill.

Colleagues, we've heard and read of all the methods and additives tobacco companies have allegedly used to target young people and communities, particularly African Americans and Hispanics, as well as to increase the likelihood of addiction. We also know that tobacco is the leading cause of death in this country, with or without menthol.

I rise in strong support of H.R. 1108 because we will finally end these practices and put in place the strongest standard for product regulation ever, as well as a mechanism for funding to support research and enforcement.

Madam Speaker, this bill does not contain everything that all of us wanted, but it is supported by the public health community because it is the important first step we must take in order to get to the point where products like menthol, that we believe may injure the health of minorities and others, will no longer be available.

I urge all of my colleagues to vote ''aye'' and the President to sign this bill so that we can move forward, after long years of trying, to finally protect the health of our constituents. And I will place in the RECORD a statement by the CBC.

We, the undersigned members of the Congressional Black Caucus, issue the following statement:

Recognizing the difficulty in getting a bill which would garner the sufficient votes in the House and Senate for passage, we the members of the Congressional Black Caucus stand firmly with the Public Health Community in support of:

The strongest standard for product regulation ever given to the FDA (stronger than food, drugs or medical devices);

Barriers to and serious consequences for those who try to market and sell to children;

The banning of additives used to manufacture flavored cigarettes, which are marketed to children and which are used to get children of ALL racial and ethnic backgrounds addicted to cigarettes in the first place;

A faster track for the development of smoking cessation and nicotine-replacement therapies; and

The authority for greater regulation—including of menthol—in the future.

And the other provisions of H.R. 1108.

Taking into consideration the disproportionate rates of cancer in the African-American community and the high use of menthol in our community, and given the fact that an attempt to ban menthol has already been offered and failed, we feel that this important first step which gives the authority to the Secretary to ban menthol and speeds up the research recommendations and report of the Scientific Advisory committee, is worthy of our support.

The Congressional Black Caucus has a long history in promoting smoking cessation programs in our community and will continue to make this a priority both as a Caucus and through partnership with the Congressional Black Caucus Foundation.

Our objective has been and will always be the well-being of the African-American community, other communities of color and all Americans. With our support for H.R. 1108 we continue this proud tradition.

Banning menthol and regulating tobacco are priorities for the CBC. We are pleased with the leadership role we assumed to accomplish both because this bill, which regulates tobacco, also represents a giant first step toward the elimination of menthol.

Mr. BARTON of Texas. Madam Speaker, I wish to recognize a distinguished Member from the great State of North Carolina, a great former professional quarterback, member of the Democratic baseball team, Mr. SHULER, for 1 minute.

Mr. SHULER. I thank the gentleman from Texas.

Madam Speaker, I rise in strong opposition of this legislation. I don't smoke, and I never have. I'm a father of two small children. You won't find a bigger opponent of tobacco use in this Congress.

I have a great deal of respect for Chairmen WAXMAN, DINGELL and PALLONE. I respect their hard work, and I share the dedication they have to reducing smoking, especially among teenagers. But giving FDA approval to tobacco is not the answer.

The FDA Commissioner testified that he has ''serious concerns that this bill will undermine the public health role of FDA.'' And the FDA Science Board said that ''FDA's inability to keep up with scientific advancements means that American lives are at risk.''

The FDA is dangerously overworked. Recently, the FDA shut down the entire domestic tomato industry. We've had listeria in frozen strawberries, E. coli in spinach and lettuce.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. BARTON of Texas. I give the gentleman an additional 1 minute.

Mr. SHULER. Salmonella in peanut butter, and poison in pet foods.

Now, I have a lot of respect for the men and women who work at the FDA, but I clearly feel that they are overworked and overburdened and have so much on their plate. We should listen to the people that are working at the FDA. We should not pile more work upon them. This bill is hazardous to your health, whether you smoke or not.

Mr. PALLONE. Madam Speaker, I yield 2 minutes to the gentlewoman from California (Mrs. CAPPS).

Mrs. CAPPS. Madam Speaker, I rise in strong support of H.R. 1108. This bill is about bringing smoking prevention and cessation efforts into the 21st century.

We have known for a long time about the health dangers—in fact, the life-threatening dangers—posed by tobacco use. Nobody uses tobacco because they think it's good for their health. What this bill does is to take the necessary steps which will most effectively help people quit, and most importantly, help them never to begin.

One of the ways that goal is accomplished through this legislation is by

giving greater authority to the Food and Drug Administration to regulate the advertising and marketing of tobacco products. By prohibiting the targeted marketing of tobacco products to children, we can help prevent countless young people from falling prey to deceptive advertising, the kind that describes smoking with the same adjectives used to describe candy and perfume, with the many enticing qualities.

Now, some of the bill's opponents may try to say the FDA is ill-equipped to do this. I just want to remind my colleagues that this bill provides the FDA new resources to handle tobacco regulation, and it's based upon a plan the agency itself devised over a decade ago.

I want to thank many colleagues who have worked tirelessly over years to bring us to this moment on this floor. I want to thank Mr. WAXMAN for his tireless leadership. I want to thank the leadership of our committee, Mr. PALLONE, and most particularly our esteemed chairman, for whom this day will mark a very special moment and milestone.

I urge all of my colleagues in this House to vote in favor of H.R. 1108.

Mr. BARTON of Texas. I yield 1 minute to the distinguished deputy whip from the great State of Virginia (Mr. CANTOR).

Mr. CANTOR. I want to thank the gentleman from Texas.

I also want to thank the gentleman from California, the gentleman from Virginia (Mr. DAVIS) and the gentleman from Michigan (Mr. DINGELL) for their cooperation with me and my office on this bill.

As our minority leader said, the scientific community as well as the general public is pretty well steeped in the dangers of smoking. I think all of us can agree it's a legitimate public policy to want to reduce the rate of smoking with our children. This bill, though, in addition to doing some of that, some of the aim behind it is to allow for it to pave the way and in fact to encourage legitimate attempts to make tobacco and tobacco products less harmful. The net result to all of us will be to increase the health outlook for consumers of tobacco and its products.

This bill is particularly meaningful to my district, as there are over 6,000 direct jobs related to the tobacco manufacturing. And there has been significant investment in my district and in the area from where I come made towards the research and development on how we make this product less harmful.

Mr. PALLONE. Madam Speaker, I yield 2 minutes to the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. Madam Speaker, I applaud my chairman, the bill's sponsors, and the bill's many supporters on a bipartisan basis for bringing such important legislation to the House floor today.

Madam Speaker, this bill is personal for me. Both of my parents are part of the statistics; both of them died from lung cancer from smoking.

As a mother of four and a grandmother of three so far, I am relentless in urging that they and everyone else's kids and grandkids not acquire this horrible addiction.

In California, 138,000 children try a cigarette for the first time each year, and more than one-third of them become regular daily smokers. Some will die as my parents did, slowly and painfully. In my mother's case, though she knew of her dire health prognosis, she never quit smoking.

I think this bill sets the right balance. It's probably as much as we can get through Congress—if we can get it through—at this time, though I would support more and will support more in the future.

The bill reinstates an FDA rule that restricts tobacco marketing and sales to children. In today's consumer culture, children are most vulnerable to attractive marketing campaigns. Tobacco's campaign has been very successful.

The bottom line is we need to put a stop on creating new tobacco users. The bill also requires enhanced labeling of health warnings on product packaging. More effective labeling will better educate the public on the dangerous consequences of tobacco. Given the state of our economy, it is foolhardy to load on health costs that we know—as even the bill's opponents have said—come from those addicted to smoking.

California spends almost $10 billion treating tobacco-related diseases each year. This is critical funding that we need elsewhere.

With the passage of the legislation today, we can prevent this. I urge an ''aye'' vote.

Mr. BARTON of Texas. Madam Speaker, I yield 2 minutes to the gentlelady from the committee, Mrs. BLACKBURN of Tennessee.

Mrs. BLACKBURN. Madam Speaker, I rise today in opposition to the bill. And I will tell you, I have great respect for the chairman and the author of the bill, but I respectfully disagree with them on this issue.

I've also served as an active volunteer with the Lung Association and with the Cancer Society and have worked diligently to stop teen smoking, but I disagree with the approach that is being taken here today.

Rather than forcing the ill-equipped FDA to regulate tobacco products, Congress should strengthen existing programs to prevent illegal tobacco use. And now the gentleman from Texas mentioned the Synar program. And I have had a piece of legislation, H.R. 5513, the Stop Adolescent Smoking Without Excessive Bureaucracy Act, that is a better solution and I think a better approach. It strengthens the existing work that the States and localities are doing to reduce underage tobacco use. It is an effective existing program.

My bill directly impacts youth access to tobacco products, which gets to the very root of the public health crisis that is brought about by the addiction of tobacco.

According to a recent Zogby poll, a majority of Americans, 82 percent, believe FDA control of tobacco would conflict with their core mission to secure the Nation's food and drug supply. And Madam Speaker, at a time when people are concerned about imported and domestic food, imported and domestic drugs, medical devices, and more, it is important that the FDA focus on that mission.

Consumers believe FDA product approval equals safety. And here we are talking about moving FDA control of tobacco and tobacco products and giving that the FDA seal of approval. I think that is a step we do not want to take.

Mr. PALLONE. Madam Speaker, I yield 30 seconds to the gentleman from California.

Mr. WAXMAN. I don't want anybody to be misled. The FDA will not give a seal of approval to any tobacco product they cannot in any way claim is safe or effective. So I think that the last statement that was made by the gentlelady is an incorrect one, and I wanted to correct that point.

Mr. BARTON of Texas. Madam Speaker, I yield for the purpose of unanimous consent to the distinguished gentleman from Connecticut.

(Mr. SHAYS asked and was given permission to revise and extend his remarks.)

Mr. SHAYS. I thank the gentleman for yielding.

Madam Speaker, I rise in support of this legislation.

I rise in support of H.R. 1108, the Family Smoking Prevention and Tobacco Control Act.

I appreciate the willingness of MR. WAXMAN to incorporate changes and address concerns that were raised about the bill as it was initially introduced, and for the work both he and Mr. DAVIS have done to bring this bill to the floor today.

The simple fact is our society as a whole is negatively impacted by smoking, and more needs to be done to curb smoking among our youth.

Bringing tobacco under the authority of the FDA will help ensure the laws on our books are enforced and will help ensure information about the dangers of smoking is adequately disseminated.

In the past, I have opposed FDA regulation of tobacco, believing that oversight should be conducted instead by an agency such as the Substance Abuse and Mental Health Services Administration (SAMSHA).

The FDA already has too many products under its jurisdiction and has trouble responding in a timely and effective manner as a result.

I have always believed, however, that tobacco should be regulated, and with the support of a diverse group of organizations, H.R. 1108 has a real opportunity to become law and the potential to significantly limit the damaging effects smoking has on our society. I urge its adoption.

Mr. BARTON of Texas. Madam Speaker, I yield 1 minute to the distinguished gentleman from Coppell, Texas and Flower Mound, Texas (Mr. MARCHANT).

Mr. MARCHANT. Madam Speaker, I am disappointed—and the people of the 24th District of Texas are disappointed—by the continued misuse and abuse of the suspension calendar. Once again, Democrats bring to the floor a bill that prohibits Members from offering amendments. This comes at a time when we could be working on a comprehensive energy bill that would do far more to benefit the American people.

Energy should have been our highest priority this summer, but instead I'm afraid that Congress will leave for a five-week recess without considering real solutions to the energy crisis.

□ 1645

When is the Democratic leadership going to put the concerns of the American people before their desire to placate the radical environmentalists?

Mr. PALLONE. Madam Speaker, I yield 2 minutes to the gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Madam Speaker, I rise today to thank my intrepid chairman, Mr. DINGELL, and also Mr. WAXMAN, for their unfailing commitment to the public health of Americans. This bill is a good bill. When I first came to Congress, now 12 years ago, it seemed to be a bill far outside our reach.

We had a number of hearings in those days, in which the tobacco manufacturers denied even that tobacco was addictive. To come from there to here is truly an extraordinary achievement, and I think we all agree that tobacco should be regulated by the FDA.

One concern I still have in this bill is tobacco is illegal now for people under the age of 21. We all have seen through testimony throughout the years that the people who get addicted to tobacco tend to do so at an early age, and tobacco manufacturers have targeted young people consistently.

I'm afraid that if the manufacturers say that they are targeting only adults, that what will happen will be they in fact will target young people, who will become addicted. That is why I was very pleased to include a provision in this law that directs the Secretary of Health and Human Services to conduct a study on the public health implications of raising the minimum age to purchase tobacco products. This report will be in to us within 5 years and we can see if there's more that we can do to protect our vulnerable young people from becoming the targets of advertising an improper addiction to tobacco.

Madam Speaker, this truly is a great day for the health of Americans. I want to commend my chairman again.

Mr. BARTON of Texas. Madam Speaker, I have no other speakers other than my close. I am going to reserve the balance of my time at this time.

Mr. PALLONE. Madam Speaker, I yield now 2 minutes to the gentleman from Maryland (Mr. VAN HOLLEN).

Mr. VAN HOLLEN. I thank my colleague, Mr. PALLONE, for his leadership, and Chairman DINGELL and the Energy and Commerce committee, Mr. WAXMAN, and so many others, who have brought this legislation to the floor, finally, after so many years and so many battles. This is a very important day for the American people.

The Food and Drug Administration, as we know, has the power to regulate and oversee all sorts of products that are sold today; many that are not addictive. Yet we have always had this big hole in that regulatory authority when it came to very addictive products of nicotine and the tobacco products.

On those issues, the FDA has been sidelined, and the result is the big tobacco companies have taken advantage of that opportunity and exploited it and they have marketed these tobacco products to generation after generation of young people through flavored cigarettes and tobacco products and on all sort of things. In fact, when you think about it, they have got to do that. In order to continue to make a profit, they have got to continue to hook one generation after another.

It's great that we are finally gathered here today to say to the FDA: You do have authority over this very important area. Let's make sure that future generations of young people do not get addicted. This has a huge cost to our society, obviously in dollars, but even more importantly, the people who die every year as a result of this. We have an opportunity today to begin to put an end to that cycle.

I am very proud that in our State of Maryland we have made progress on this on a State basis. We have tried to increase the tobacco tax to reduce tobacco use among young people and use those proceeds for health purposes. But you can't have every State fighting alone to have a successful national program. You need one entity that has this power to help protect the American people, especially the young people of this country.

I thank the committee for its leadership.

Mr. BARTON of Texas. Madam Speaker, I would assume the majority has got the right to close, so I am just reserving until they are ready to close.

Mr. PALLONE. I have no remaining speakers, Madam Speaker. How much time remains on this side?

The SPEAKER pro tempore. Thirty seconds.

Mr. PALLONE. I will reserve the 30 seconds.

Mr. BARTON of Texas. Don't I have 4 minutes?

The SPEAKER pro tempore. The gentleman from Texas controls 4½ minutes.

Mr. BARTON of Texas. I would be happy to yield a minute and a half of my time to the majority so that they have 2 minutes and I have 2½ minutes, if that would help.

Mr. PALLONE. Let me thank the ranking member of the full committee for the time. I have no remaining speakers, and will reserve the balance of my time to close, Madam Speaker.

Mr. BARTON of Texas. I am going to recognize myself for the balance of my time.

The SPEAKER pro tempore. The gentleman from Texas is recognized for 2½ minutes.

Mr. BARTON of Texas. I want to point out a couple of things. This bill does not ban tobacco. Most of the rhetoric on the other side has, rightfully so, been about the evils of tobacco. But the bill before us doesn't ban tobacco. In truth, what the bill before us does is allocate market share of the existing marketers of tobacco in the United States. It also sets up a huge regulatory machine at FDA, where the Food and Drug Administration literally has to go into every convenience store apparently in America and make sure that certain displays are at a certain eye level and all this kind of thing.

It bans, as I understand it, flavored cigarettes, except for menthol, in which it requires a study of menthol cigarettes to be reported by a date certain, which I think is 1 year. And then, in order to pay for this huge new bureaucracy that has to be created for the tobacco police, it sets up some sort of a gimmick in the Tax Code for people to choose between a thrift savings account and a Roth IRA. If you invest in a Roth IRA, you pay taxes before you put the money in the account. If you decide to invest in a thrift savings account, you don't have to pay taxes until you take the money out of the account.

Somehow, and we don't know much about this because we only got the bill with this section about 3 hours ago, there's something in there that they think scores about $2 billion over 10 years because more people will opt to take the Roth IRA, where they pay taxes up front.

Last, but not least, Madam Speaker, it sets up some sort of a records inspection for the Secretary of HHS to go in and look at the records to make sure that tobacco products are not smuggled or counterfeited unless those tobacco products are sold on Indian lands, in which case the Indian tribe has the right to opt out of that, which I think is going to set up a huge loophole because my guess is that the Indian tribes, not being foolish, are going to obviously opt out of Federal regulation of this inspection program.

In short, this is a bill that, while noble in intent, is very flawed in implementation. It shouldn't be on the suspension calendar. It shouldn't have come up only 3 hours before it's debated.

We should vote this bill down. If you really want to do something about tobacco products, let it go through the

regular process. I would urge a ''no'' vote on the pending legislation.

I yield back the balance of my time.

The SPEAKER pro tempore. The gentleman from New Jersey is recognized for the remaining 2 minutes.

Mr. PALLONE. Thank you, Madam Speaker.

I just want to stress in closing that this really is a bipartisan bill that is supported overwhelmingly by both sides of the aisle. I have had the opportunity under the auspices of Tobacco-Free Kids, which is one of the big supporters of this bill, to go to an elementary school in my district one day recently. And I found out that the kids there were all from fifth grade down. It was incredible to me to realize that some of them had already started to smoke and they were very much unaware of the fact of the dangers of tobacco.

That was really a revelation for me that day, to realize that there are a lot of children at a very young age that start smoking that are unaware of the dangers, even with all the declarations and disclaimers that are out there.

So I really think that this legislation that we are passing today is for the kids. It for those children who will stop or never, hopefully, have the opportunity or think about smoking because they will realize how dangerous it is because it's now regulated by the FDA.

I just want to thank Mr. WAXMAN; I know he has worked for many years on this, and Mr. DINGELL and so many on both sides of the aisle because I think they recognize while it may be true that a lot of adults know what they are doing when they smoke, and they do it regardless of the health impact, that really what we need to address are those kids that start smoking at a young age, that become addicted, that are not aware of the perils, and then later just simply can't stop.

So I would urge all of my colleagues. This is a very historic day. This is a very important piece of legislation. Let's pass it overwhelmingly today on a bipartisan basis.

Mr. LEVIN. Madam Speaker, I rise in strong support of H.R. 1108, the Smoking Prevention and Tobacco Control Act. I urge the House to vote in favor of this legislation, which takes critical steps to protect the public, especially minors, from the dangers of tobacco use.

According to the American Heart Association, cigarette use is the number one preventable cause of poor health and premature death worldwide. It is estimated that smoking causes one in five deaths in the United States, or approximately 400,000 premature deaths per year.

Despite laws in every state prohibiting the sale of cigarettes to minors, the U.S. Surgeon General estimates that young people ages 12 to 17 continue to purchase and smoke millions of packs of cigarettes each year. H.R. 1108 contains a number of strong provisions to protect young people from tobacco advertising and access to tobacco products. The bill requires the Food and Drug Administration to ban outdoor tobacco advertising within 1,000 feet of schools and playgrounds, restrict tobacco vending machines to adult-only facilities, require retailers to verify age for all over-the-counter tobacco sales, and mandate Federal enforcement and penalties for those who sell tobacco products to minors.

The Family Smoking Prevention and Tobacco Control Act also includes provisions to ensure that tobacco advertising is not misleading to consumers. In the past, tobacco companies have been allowed to use such terms as ''light,'' ''mild,'' and ''low'' without proving that products labeled with these words were less dangerous to health than generic equivalents. This bill requires tobacco manufacturers to prove that products actually impart reduced risk or reduced exposure to users before employing terms that imply these safeguards.

In addition, H.R. 1108 contains vital provisions that aim to reduce the harmful health effects of tobacco products for adults who do decide to use them. The bill allows the Food and Drug Administration to regulate the contents of cigarettes and other tobacco products. This authority is of paramount importance. Over 4,000 chemicals, including 60 carcinogens, have been identified in tobacco smoke. It is unlikely that tobacco will ever be an inherently safe product. But allowing the Food and Drug Administration to regulate the chemical additives to cigarettes and smokeless tobacco will help to reduce the health dangers of these products to the extent possible.

Passage of H.R. 1108 is an essential step forward in promoting the health of all Americans. Let's pass this important legislation.

Mr. LANGEVIN. Madam Speaker, I rise in strong support of H.R. 1108, the Family Smoking Prevention and Tobacco Control Act. This bill is a pioneering step forward in a decades-long struggle to safeguard the health of our citizens by ensuring that tobacco products are properly regulated. I am proud that the House of Representatives is taking this historic action on such an important public health issue.

The dangers of tobacco products are no secret. According to the Centers for Disease Control and Prevention (CDC), the adverse health effects from cigarette smoking account for an estimated 438,000 deaths, or nearly 1 out of every 5 deaths, each year in the United States. Additionally, a report released by the National Cancer Institute states that smokeless tobacco contains 28 cancer causing agents. Despite these and a multitude of other troubling revelations, the tobacco industry has remained virtually outside the realm of transparency or oversight. This groundbreaking measure will empower the Food and Drug Administration (FDA) with meaningful authority to regulate tobacco product content and marketing for the first time in our nation's history.

H.R. 1108 authorizes the FDA to restrict the sale and distribution of tobacco products, including its advertising and promotion, particularly as it affects children. It requires tobacco companies to disclose the nicotine levels and chemical contents of their tobacco products, and mandates reporting on changes to the products and any research regarding their health effects. This legislation does not permit the removal of nicotine from tobacco; however, it will grant the FDA authority to eliminate harmful ingredients and additives, and reduce nicotine levels. It will also prohibit terms such as ''light,'' ''mild'' and ''low-tar'' that mislead consumers into believing that certain cigarettes are safer than others.

Tobacco is a drug with well known adverse health effects, and it should be regulated by the Food and Drug Administration like any other. This bill will provide the FDA with the necessary regulatory and oversight authority to address how tobacco products are manufactured, advertised, and marketed. Further, it will fund this authority with user fees to ensure that other efforts at the FDA are not compromised.

The CDC estimates that every day, approximately 4,000 youth try a cigarette for the first time, and another 1,000 will become new, regular daily smokers. One-third of these youth will eventually die prematurely as a result. At a time when our nation's health care system is already straining under the increased weight of chronic disease, this Congress must take action to directly address the dangers of tobacco. To that end, I remain ready to work with my colleagues on this important issue and urge that they support the Family Smoking Prevention and Tobacco Control Act.

Ms. SCHAKOWSKY. Madam Speaker, I am a strong supporter and cosponsor of H.R. 1108, the Family Smoking Prevention and Tobacco Control Act, and I urge my colleagues to join me in voting for it today. I also want to commend and thank Congressman WAXMAN for introducing this important legislation that will significantly improve public health by strengthening the regulation of tobacco products.

There are over 44 million smokers in the United States and over 435,000 tobacco-related deaths each year. In Illinois alone, 24.3 percent of adults and 29.2 percent of youths smoke tobacco. Each year in Illinois, more than 16,000 people die from smoking-related illnesses, including 2,900 adults and children who die of second-hand smoke. In addition, $3.2 billion is spent in direct medical expenditures related to smoking in Illinois.

The tobacco industry spends $17 million a day to promote their products. Their targets are often teens, women and minorities. The average age when an individual becomes a daily smoker is 14.5 years. Every day, more than 4000 kids try their first cigarette and about half become addicted to tobacco. Nicotine and other tobacco products have become a pediatric disease. H.R. 1108 would help prevent these potentially deadly products from getting into the hands of children and youth.

This legislation would give the Food and Drug Administration (FDA) the power to regulate the manufacture, distribution and sale of tobacco products, authorities needed to safeguard the public health and our children. In addition, H.R. 1108 would lessen the cost of smoking-related medical illnesses and prevent adolescents and teens from smoking at a young age. The fact that the tobacco industry is now advertising a new generation of products with unproven claims that they are less harmful makes the need for FDA oversight even more urgent.

I am very proud that the State of Illinois has already taken measures to curb the effects of smoking on the public. I also appreciate the efforts that the Illinois Academy of Family Physicians have taken to educate the public and Congress about the dangers of smoking. Already, the Academy's ''Tar Wars'' campaign has had clear and successful results. I see it in the drawing of Alexandra Slane, an elementary school grader from Peoria, who won the Illinois Tar Wars annual poster contest. Her

drawing of a human-shaped light bulb is captioned with a warning to America, "Be Bright Don't Light!" Let us all be bright—let us pass H.R. 1108 and act to improve the Nation's health.

Mr. DINGELL. Madam Speaker, I submit the following exchange of letters for the RECORD.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 18, 2008.

Hon. JOHN DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN DINGELL: This is to advise you that, as a result of your working with us to make appropriate revisions to provisions in H.R. 1108, the ''Family Smoking Prevention and Tobacco Control Act,'' that fall within the rule X jurisdiction of the Committee on the Judiciary, we are able to agree to discharging our committee from further consideration of the bill in order that it may proceed without delay to the House floor for consideration.

The Judiciary Committee takes this action with the understanding that by foregoing further consideration of H.R. 1108 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation. We also reserve the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this important legislation, and request your support if such a request is made.

I would appreciate your including this letter in the Congressional Record during consideration of the bill on the House floor. Thank you for your attention to this request, and for the cooperative relationship between our two committees.

Sincerely,

JOHN CONYERS, Jr.,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, June 19, 2008.

Hon. JOHN CONYERS, Jr.,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 1108, the ''Family Smoking Prevention and Tobacco Control Act''. The letter noted that certain provisions of the bill are within the jurisdiction of the Committee on the Judiciary under rule X of the Rules of the House.

The Committee on Energy and Commerce recognizes the jurisdictional interest of the Committee on the Judiciary in those provisions, and we appreciate your input on drafting issues related to those provisions. We further appreciate your agreement to forgo action on the bill, and I concur that the agreement does not in any way prejudice the Committee on the Judiciary with respect to the appointment of conferees or its jurisdictional prerogatives on this bill or similar legislation in the future.

I will include our letters in the Congressional Record during consideration of the bill on the House floor. Again, I appreciate your cooperation regarding this important legislation.

Sincerely,

JOHN D. DINGELL,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, July 24, 2008.

Hon. JOHN DINGELL,
Chairman, Committee on Energy and Commerce, Washington, DC.

DEAR CHAIRMAN DINGELL: I am writing to confirm our understanding on H.R. 1108, the ''Family Smoking Prevention and Tobacco Control Act.'' The report (110–762) on the bill was recently filed by the Committee on Energy and Commerce. As you are aware, the Committee on Ways and Means believes that the amount of money raised by the assessment of the user fee in H.R. 1108 is more than the amount of money being made available to the Secretary of Health and Human Services (HHS) for the regulation of tobacco.

The version of H.R. 1108 recommended by the Committee on Energy and Commerce contains two sets of funding numbers, one set is the number raised by the user fee (the assessment) and the second number is the amount available to the Secretary of Health and Human Services for administering the regulation of tobacco. Clearly, the amount of money raised via the assessment in Section 920, 4(c)(1), is greater than the amount being made available for the regulated activity in Section 920 (b)(2).

The Committee on Ways and Means believes that this violates both the Speaker's guidelines of January 3, 1991 on the treatment of user fees and taxes under clause 5(a) of Rule XXI, which provides that the money raised by a user fee should be used solely for the regulatory activity and raises revenue generally, a matter within the jurisdiction of the Committee on Ways and Means under Rule X.

The extra money being raised is above the funding being made available to the FDA for tobacco regulation and, since the bill forbids the funds from being spent on anything other than tobacco regulation, would in fact revert back to the general fund of the U.S. Treasury. The version of the bill recommended by the Committee on Energy and Commerce would then be financing the costs of government generally, which is clearly the jurisdiction of the Committee on Ways and Means.

My staff on the Committee on Ways and Means has been in contact with your staff, and there is an understanding that you agree that the bill will not come to the Floor in its current form, but rather that there will be an Amendment in the Nature of a Substitute that will be submitted to the Committee on Rules that removes the 6% add-on from the underlying user fee, and replaces it in a way that does not negatively impact the jurisdiction of the Committee on Ways and Means.

In addition to the funding issue, H.R. 1108 includes a prohibition against the use of clove to create a characterizing flavor in cigarettes. The Committee on Ways and Means believes this provision to be within its jurisdiction because all clove-flavored cigarettes currently sold in the United States are imported. I understand that you recognize our jurisdictional interest in this question, given its effects on trade and customs revenues.

As part of our ongoing understanding regarding H.R. 1108, the Committee on Ways and Means has agreed to forgo any action on this bill as long as our jurisdictional prerogatives are being respected. This is being done with the understanding that it does not in any way prejudice the Committee with respect to any further jurisdictional questions on similar legislation in the future.

In addition, if a House-Senate conference is convened on H.R. 1108 or similar legislation, the Committee on Ways and Means understands that you will support my request for an appropriate number of Conferees to enable the Committee on Ways and Means to protect its jurisdictional interests on substantive issues.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 1108, and would ask that a copy of our exchange of letters on this matter be included in the Congressional Record.

Sincerely,

CHARLES B. RANGEL,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, July 25, 2008.

Hon. CHARLES B. RANGEL,
Chairman, Committee on Ways and Means, Washington, DC.

DEAR CHAIRMAN RANGEL: I write regarding H.R. 1108, the Family Smoking Prevention and Tobacco Control Act. Thank you for your letter to me in which you expressed the jurisdictional interest of the Committee on Ways and Means in certain provisions of the reported bill.

The bill provides for the regulation of tobacco products by the Food and Drug Administration (FDA). The Congressional Budget Office estimates that regulatory activities under the bill would curtail the consumption of tobacco products, thus reducing Federal revenues by a net amount of approximately $364 million over a 10 year period.

The bill reported by the Committee on Energy and Commerce contains a program under which the tobacco industry pays user fees. The bill pays for its $364 million net cost by proportionally increasing the user fee. In other words, the reported bill complies with Pay-As-You-Go requirements by charging the tobacco industry the additional cost of the legislation. This additional charge increases the user fee by approximately 6 percent.

This 6 percent add-on is not available to FDA, but rather is deposited in the general fund of the Treasury. I acknowledge that the Committee on Ways and Means has jurisdiction over the provisions of the bill that concern the 6 percent add-on. I appreciate that the Committee on Ways and Means did not exercise its right to a sequential referral of the bill regarding the add-on, and you have my commitment that the version of the bill the Committee on Energy and Commerce prepares for the House floor will not include any add-on to the user fees for the purpose of meeting Pay-As-You-Go requirements.

You also have expressed concerns about the provision in the bill that prohibits the use of clove to create a characterizing flavor in cigarettes. I acknowledge your concerns and understand that the Committee on Ways and Means has jurisdiction over import bans because of the effects on trade and on customs revenues. The Committee on Ways and Means did not seek a sequential referral of the bill on the basis of the clove provision. Again, I appreciate your cooperation.

I agree that the decision to forgo a sequential referral of the bill does not in any way prejudice the Committee on Ways and Means with respect to any further jurisdictional questions on similar legislation in the future or with respect to the appointment of conferees. If a House-Senate conference is convened on H.R. 1108 or similar legislation, I would support a request by the Committee on Ways and Means for an appropriate number of conferees with respect to provisions within its jurisdiction.

Per your request, I will include copies of our exchange of letters on these matters in the Congressional Record. I appreciate your cooperative attitude regarding the intent of the Committee on Energy and Commerce to consider this landmark public health legislation on the House floor expeditiously.

Sincerely,

JOHN D. DINGELL,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC, July 30, 2008.

Hon. JOHN DINGELL,
Chairman, Committee on Energy and Commerce, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for the opportunity to work with you on changes to H.R. 1108, the Family Smoking Prevention and Tobacco Control Act, regarding provisions in the bill dealing with Indian tribes which are within the jurisdiction of the Committee on Natural Resources.

Because of the cooperation and consideration that you have afforded me and my staff in developing these changes to the bill, I did not insist on a sequential referral of H.R. 1108 even though the legislation included language within the jurisdiction of the Committee on Natural Resources. Of course, this waiver does not prejudice any existing or future jurisdictional claims over these provisions or similar language. I also reserve the right to seek to have conferees named from the Committee on Natural Resources on these provisions, and request your support if such a request is made.

I would ask that you place this letter into the Congressional Record during consideration of the measure on the House floor.

Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

With warm regards, I am

Sincerely,

NICK J. RAHALL, II,
Chairman, Committee on Natural Resources.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, July 30, 2008.

Hon. NICK J. RAHALL II,
Chairman, Committee on Natural Resources, House of Representatives, Washington, DC.

DEAR CHAIRMAN RAHALL: I write regarding H.R. 1108, the Family Smoking Prevention and Tobacco Control Act. The bill provides for the regulation of tobacco products by the Food and Drug Administration (FDA).

The bill reported by the Committee on Energy and Commerce requires the the Secretary of Health and Human Services to ensure that the provisions of the bill, the amendments made by the bill, and the implementing regulations are enforced with respect to the United States and Indian tribes. I acknowledge the jurisdictional interest of the Committee on Natural Resources in this requirement as it relates to Indian tribes, and I appreciate that the Committee did not exercise its right to a sequential referral of the bill.

I agree with you that the decision to forgo a sequential referral of the bill does not in any way prejudice the Committee on Natural Resources with respect to its jurisdictional prerogatives, including the appointment of conferees, on this bill or similar legislation in the future.

I will include this letter in the Congressional Record during consideration of the bill on the House floor. I appreciate your cooperative attitude regarding this landmark public health legislation.

Sincerely,

JOHN D. DINGELL,
Chairman.

Mr. STARK. Madam Speaker, tobacco use is the Nation's leading cause of preventable death, and, without aggressive help from Congress, will continue to be in the foreseeable future. That is why I rise today in strong support of the family Smoking Prevention and Tobacco Control Act, a bill that will give the FDA extensive new authority to regulate tobacco products.

I am alarmed by CDC reports that state that 8.6 million Americans have a serious illness caused by smoking, and that close to 440,000 people in the United States die prematurely from either smoking or contact with secondhand smoke. However, I am particularly shocked by statistics that demonstrate that smoking rates among high school students stayed the same from 2003–2007. With all the awareness campaigns targeted toward youth, this rate should have dropped. These statistics are unacceptable, and it is clear that Congress needs to step in.

The Family Smoking Prevention and Tobacco Control Act allows the FDA, among other things, to restrict tobacco advertising and promotions to children, force manufacturers to obtain approval before making reduced-risk product claims, form standards to reduce or eliminate toxic chemicals within tobacco products, and recall unreasonably harmful tobacco products. This piece of legislation is a long sought after bipartisan compromise.

I trust that my colleagues will join me in supporting this bill. Tobacco does not just affect individuals who smoke; it affects our children's futures and the economic prospects of our Nation. Each year because of tobacco use we lose more than $96 billion in medical costs and $97 billion as a consequence of lost productivity. It's time for us to stamp out this burning cigarette, and voting for the Family Smoking Prevention and Tobacco Control Act will be the first step.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. DINGELL) that the House suspend the rules and pass the bill, H.R. 1108, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. BARTON of Texas. Madam Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

CONFERENCE REPORT ON H.R. 4040, CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008

Mr. DINGELL. Madam Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 4040) to establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission.

The Clerk read the title of the bill.

(For conference report and statement, see proceedings of the House of July 29, 2008 at page H7194.)

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. DINGELL) and the gentleman from Texas (Mr. BARTON) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. DINGELL. Madam Speaker, I ask unanimous consent that the debate on this motion be extended by 10 minutes on each side.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

GENERAL LEAVE

Mr. DINGELL. Madam Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and to insert extraneous materials on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DINGELL. Madam Speaker, I yield myself 3 minutes.

Madam Speaker, it is with a great deal of pride and pleasure that I bring before the House a strong bipartisan bill that will protect the American public from unsafe consumer products. I have some kudos for my colleagues. I want to commend the chairman of the subcommittee, my dear friend, Mr. RUSH, for his outstanding leadership in the handling of this legislation. I also want to praise my dear friend, the ranking member of the full committee, Mr. BARTON, and all of the House conferees who served so well in working out a difficult bill. Working with them has been a privilege and a pleasure.

The House passed H.R. 4040 without a dissenting vote in December of last year, and the House followed with its amendment in March of this year. The resulting conference report represents the most significant overhaul of U.S. consumer product safety laws since the creation of the Consumer Product Safety Commission some 40 years ago under the sponsorship of myself and my dear friend from California, John Moss.

Under H.R. 4040, the CPSC will receive substantial funding and staff increases, greater laboratory and computer resources, and a stronger statutory mandate going forward. Industry-sponsored travel by CPSC commissioners and staff will be banned. The presence of lead and dangerous phthalates in toys and other products of children up to age 12 will be banned.

CPSC will be required to establish a publicly accessible data base to help consumers report and learn about deaths and serious injuries caused by consumer products. Toys and other children's products will be subject to premarket testing by certified laboratories.

□ 1700

The conference agreement also strengthens protections against the import and the export of dangerous products and enhances the tools for removing recalled products from store shelves.

To deter wrongdoing, it takes a number of important steps. It increases the